



SERVING PUBLIC BUYERS AND VENDORS OF THE COMMONWEALTH OF MASSACHUSETTS

Operational Services Division

Best Value Procurement Handbook

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I. INTRODUCTION AND EXECUTIVE SUMMARY

This Best Value Procurement Handbook sets forth the policy requirements and best practices established pursuant to the Commonwealth of Massachusetts' procurement regulation, 801 CMR 21.00, Procurement of Commodities and Services, including Human and Social Services. This Handbook provides comprehensive guidance to Departments on competitive procurement, purchasing and contract management requirements for goods and services, including use of the Operational Services Division's (OSD) COMMBUYS Market Center. COMMBUYS is the designated source for posting all jurisdictional bids, accepting electronic responses, awarding contracts and associated catalogs, documenting procurement exceptions, and issuing requisitions and purchase orders. Collectively, the requirements outlined in this policy are designed to ensure an open, fair, and competitive procurement process, as well as an efficient and transparent purchasing process.

The guidance in this document must be followed by all Executive Branch Departments. Some non-Executive Departments (collectively, Departments) have elected to follow 801 CMR 21.00 and are encouraged to follow this guidance as well.

II. OVERVIEW OF OSD'S AND DEPARTMENTS' ROLES AND RESPONSIBILITIES

A. Scope of Procurement and Purchasing Oversight by OSD

The statutory authority vested in the Assistant Secretary for Operational Services (also referred to as the State Purchasing Agent), or designee, and OSD to oversee the procurement of commodities and services by Commonwealth entities is found in M.G.L. c. 7, s. 22; M.G.L. c. 30, s. 51 and M.G.L. c. 30, s. 52. These statutes form the basis of the applicable procurement regulation, 801 CMR 21.00, which provides all Commonwealth Departments with uniform rules and standards governing the procurement of commodities or services, or both, including human and social services for clients.

OSD is an oversight agency whose primary responsibilities are to oversee the procurement and acquisition of goods and services by executive branch Departments, establish statewide contracts on behalf of Commonwealth public purchasers, provide procurement guidance and technical assistance to Departments, and ensure that Departments conduct procurements in compliance with all applicable statutes, regulations, and policies.

i. Compliance with 801 CMR 21.00

Absent a superseding law or regulation, 801 CMR 21.00, Procurement of Commodities or Services, including Human and Social Services, covers the acquisition of ALL commodities and services by Departments within the Executive Branch. Additional procurement and contracting requirements apply to purchase of service (POS) contracts; these are addressed in Appendix F

Purchase of Service (POS) Bid Specifications and Guidance.

ii. Applicability of 801 CMR 21.00 – Procurement Levels III, II and I

For the purposes of delineating which Massachusetts Management Accounting and Reporting System (MMARS) Departments follow regulation 801 CMR 21.00, the Operational Services Division and the Office of the Comptroller (CTR) have defined three levels of Departments:

- Level III: All Executive Branch Departments must follow 801 CMR 21.00.
- Level II: Non-Executive Departments, such as constitutional offices, elected offices, and public institutions of higher education, may choose to follow 801 CMR 21.00 and many have elected to do so by filing a document with OSD and the Office of the Comptroller (CTR) attesting to their compliance with 801 CMR 21.00. Non-Executive Departments, however, are required to follow MGL c. 7, s. 22, M.G.L. c. 30, s. 51 and M.G.L. c. 30, s. 52 and are strongly encouraged to voluntarily use 801 CMR 21.00.
- Level I: Exempt Departments, such as the legislative and judicial branches, the military division, and independent public authorities are not required to follow 801 CMR 21.00. However, they also may elect to adhere to the procurement principles and processes under 801 CMR 21.00.

OSD and CTR have provided extensive guidance pertaining to adherence to the regulation, the underlying statutes, and compliance with State Finance Law. Additional information may be found at: [Office of The Comptroller - Fy15 Department by Secretariat](#)

iii. Entities Not Required to Follow 801 CMR 21.00

OSD's procurement statutes specifically exempt the legislative branch and military division. Additionally, the regulations do not apply to all or part of the procurements of the following Commonwealth entities:

- The judicial branch pursuant to Article 30 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts, which sets forth the separation of powers principle in the Massachusetts Constitution. There also is case law that supports the separation of powers of the three branches of state government, but specifically states that it does not preclude participation on a voluntary basis.
- Cities and towns and other public purchasers that follow M.G.L. c. 30B may purchase from OSD statewide contracts per M.G.L. c. 7, s. 22A and M.G.L. c. 30B, s. 1(c) and they also may purchase from contracts procured by Commonwealth Departments that issue procurements subject to 801 CMR 21.00. See the Contract Categories section in this document regarding municipal use of Commonwealth Statewide and Department contracts. OSD has no oversight authority over M.G.L. c. 30B or these entities. Although not required to do so, cities and towns frequently purchase from statewide contracts because it saves them the time of conducting their own M.G.L. c. 30B procurements and also because statewide contract prices often are more competitive due to the Commonwealth's purchasing power.

- Public Universities, Community Colleges, and the Higher Education Consortium, that have statutory authority to conduct certain procurements pursuant to M.G.L. c. 75, s. 13; M.G.L. c. 73, s. 15; M.G.L. c. 15A, s. 24 and M.G.L. c. 15A, s. 24A. However, where these statutes are silent, these entities fall under OSD's statutes and authority.

iv. Commodities and Services Not Covered by 801 CMR 21.00

801 CMR 21.00 and these policies apply to all goods and services procurements, unless subject to a competitive procurement exception. They do not apply to the following:

- Horizontal Construction: The Massachusetts Department of Transportation (MassDOT) is the oversight Department for horizontal construction.
- Vertical Construction: The Division of Capital Asset Management and Maintenance (DCAMM) is the oversight Department for vertical construction.
- Real Property Sales and Leasing: DCAMM is the oversight Department for real property transactions.
- InterDepartmental Service Agreements and Chargebacks: The Office of the Comptroller is the oversight Department for these agreements and chargebacks; 815 CMR 6.00 is the governing regulation.
- Grants and Subsidies: The Office of the Comptroller is the oversight Department for grants and subsidies; 815 CMR 2.00 is the governing regulation. If a federal grant will result in a named partner other than the Commonwealth, then the process for selecting the named partner must be subject to competitive procurement regulations.

v. Delegation of Procurement Authority

Authority to issue procurements and enter into contracts up to a specified threshold has been delegated by OSD and CTR to Level III Executive Branch Departments, as well as to Level I and II entities. This delegation authority is premised upon compliance with all applicable statutes, regulations, and policies. Departments must document and verify that all purchases have been made in accordance with prescribed laws, regulations, policies and procedures to ensure that the acquisition represents "best value" to the Commonwealth. Please see Section IV for additional information.

vi. OSD Quality Assurance Program

The OSD Quality Assurance (QA) Program is a key element in the success of the procurement and purchasing policies established by OSD. The purpose of the program is to assist Departments in achieving and maintaining compliance with 801 CMR 21.00 and the related OSD policies and guidance, including use of COMMBUYS. This goal is accomplished by:

- Examining procurement and purchasing activities (including contracting) from data captured in COMMBUYS and MMARS;

- Scheduling on-site visits to meet with a Department's Chief Procurement Officer (CPO), Chief Fiscal Officer (CFO), and procurement staff in addition to reviewing procurement files; and
- On-going communication with the CPO, CFO, and procurement staff at the individual Departments.

The QA review identifies a Department's level of compliance with procurement rules and regulations and provides a basis for:

- Identifying the amount of support needed by Departments to meet compliance;
- Ensuring delegation levels for Departments are appropriate; and
- Updating appropriate OSD training to target specific areas of concern.

Depending on the results of a QA review, Departments may be required to:

- Schedule regular meetings over a period of time to maximize the benefits of the assistance;
- Develop a Corrective Action Plan (CAP) to resolve non-compliance issues with a deadline and provide a copy to the OSD QA team; and/or
- Have procurement and purchasing activities monitored for a determined duration after the QA review.

The OSD QA Team will monitor and assist Executive Departments to ensure compliance with applicable laws, regulations, and policies. In addition to conducting queries on Department encumbrance activity, the QA Team may review COMMBUYS use and records, and conduct regular site visits to review Department procurement files and internal procurement practices. These in-depth reviews not only determine compliance with requirements and policies, but also facilitate provision of training, technical support, or assistance, as needed.

vii. Additional OSD Resources

OSD offers a number of additional tools to Departments to understand and comply with applicable requirements. In support of OSD's mission, the OSD training team provides a variety of free training opportunities for both the buying and selling communities that support a Department's ability to understand and follow 801 CMR 21.00 and associated policies and to use COMMBUYS to conduct procurement and purchasing activities. Webinars and classroom training cover all aspects of procurement and purchasing. In addition, OSD's Help Desk is available to assist Executive Departments and others with use of COMMBUYS and OSD's statewide contracts.

viii. Using the Office of the Comptroller's Expenditure Classification Handbook

The Office of the Comptroller issues a handbook of expenditure object classes and object codes known as the Expenditure Classification Handbook, which is helpful in determining coverage of 801 CMR 21.00. Object classes are identified under lettered categories such as "JJ - Programmatic Operational Services." Object codes are more specific expenditure breakdowns within an object class, such as "J50 - Instructors/Lecturers/Trainers."

In addition to describing the types of expenditures that should be classified under specified object classes and object codes, the Expenditure Classification Handbook includes helpful information on relevant legal citations, regulations, restrictions, and contract and encumbrance requirements. Departments should review the Expenditure Classification Handbook (available on the Comptroller's website) for information on the specific object codes that are covered under 801 CMR 21.00. Departments must determine the object code that applies to their anticipated purchase **prior** to beginning the purchasing process to determine the applicable procurement requirements.

B. Roles and Responsibilities of Departments

M.G.L. c. 7, s. 22 establishes OSD oversight of "the manner and method of the purchasing, delivering, and handling of, and the contracting for" goods and services. As noted above, Executive Branch Departments maintain procurement and acquisition authority via delegation. An ongoing obligation associated with that delegated authority is full compliance with applicable regulations and policies. Specific obligations are detailed below.

i. Required Use of Statewide Contracts

Executive Branch Departments must utilize established statewide contracts for the purchase of commodities and services. Specifically, Executive Departments are required to use OSD's statewide contracts, including designated statewide contracts, if available, for their specific commodity and service needs. Exceptions only will be permitted with prior written approval from the Assistant Secretary for Operational Services, or designee. The process Departments must follow when requesting this approval is explained in Section III, A, ii.

ii. Follow Procurement and Purchasing Policies and Regulations

Conduct all procurements for and acquisitions of commodities and services for the Department consistent with all applicable Commonwealth statutes, regulations, policies, and procedures. This includes accepting responsibility for delegated procurement authority and accountability for the actions of all members of the Department under 801 CMR 21.00 and associated forms and policy guidance. Compliance with applicable procurement and purchasing requirements includes applicable Executive Orders.

iii. Designate a Chief Procurement Officer

Pursuant to Executive Order 533, each Secretariat and each Executive Branch Department must designate a Department CPO who serves as the head of procurement and sourcing within the agency. The CPO is the individual with primary responsibility for ensuring that Department procurement practices comply with OSD requirements.

a. Best Practices – Training

To be effective in the role, it is highly recommended that agency CPOs attend relevant OSD training opportunities. Agency CPOs must attend OSD's five-day Strategic Sourcing Certificate Program.

Additionally, to ensure that agency practices conform to procurement and purchasing requirements, CPOs periodically should identify agency staff involved in these activities and propose appropriate training opportunities. OSD's Training course catalog, available on the OSD website, includes a full range of introductory and advanced classes that allow both new and experienced staff to develop and maintain appropriate skills.

iv. Maintain and Use COMMBUYS Account

All Departments must maintain and keep up-to-date a COMMBUYS organization account. COMMBUYS provides online public access to public solicitation and contract documents. Web-based distribution of procurement information and receipt of bid responses increases the volume and quality of competition, reduces the time and money spent creating and managing paper documents, and provides greater and more immediate procurement transparency.

a. Organization Administrator

Departments and other entities using COMMBUYS must designate an Organization Administrator (OA), who is responsible for attending training, determining individual access, and assigning appropriate user roles and approval paths that determine the features for which access will be allowed or restricted within COMMBUYS. Organization Administrators typically are CFOs or CPOs, or their designees, and these individuals often serve as MMARS liaisons. The designated OA should maintain the COMMBUYS account with current staff information and authorizations. For Executive Departments, purchaser roles associated with the approval of Release Requisitions, Purchase Orders (including MBPOs), and Change Orders must align with Security Roles assigned in MMARS, to comply with CTR's [Department Head Signatory Authorization \(DHSA\) and Electronic Signatures for MMARS Transactions Policy](#). Additional information to support OA account maintenance may be found in the COMMBUYS resource center.

b. Required Use of COMMBUYS

To comply with applicable procurement and acquisition laws, regulations, policies, and practices, and to achieve the Commonwealth's procurement goals to streamline processes and conduct strategic analysis, Departments are required to post records on [COMMBUYS](#) when conducting the following:

1. Creating requisitions to initiate purchases in the system;
2. Posting all solicitations for goods and services, including RFQs;
3. Recording procurement exceptions;
4. Posting Procurement Notifications: Due Diligence Postings, RFIs, WTO Notices;
5. Receiving only electronic responses for Small and Large Procurements;
6. Awarding contracts, creating electronic catalogs, and placing orders; and
7. Announcements of grant funding availability and grantee selection for State Discretionary Grants.

v. Department Role in QA reviews

Departments undergoing review by OSD's QA unit are expected to provide full access to relevant documents and personnel, respond to requests and inquiries in a timely manner, and to be available for meetings, as requested. In addition, Departments are obligated to comply with any required corrective actions that result from QA reviews.

III. COMPETITIVE PROCUREMENT REQUIREMENTS

A. Authorized Methods for Acquiring Goods and Services

Competitive procurements may result in two categories of contracts: (1) statewide contracts (including designated contracts), and (2) limited user contracts (that may be either single or multi-user contracts). Other than competitive procurement exceptions, transactions will fall under one of these categories.

In total, there are six authorized methods of acquiring goods and services subject to 801 CMR 21.00:

1. Acquisitions through statewide contracts;
2. OSD-authorized exceptions, in writing, to use of statewide contracts;
3. Use of another Department's contract (non-statewide/limited user);
4. Issuance of an RFR (resulting in a limited user contract);
5. Due Diligence postings that require OSD approval; and
6. Acquisitions that fall under procurement exceptions.

Each method and applicable requirements are discussed below.

i. Statewide Contract Use is Mandatory for Executive Departments

Executive Departments are required to use statewide contracts, if available, for their commodities and services needs, and these commodities and services must be purchased through COMMBUYS. Statewide contracts for commonly used commodities and services are established by OSD or a Department formally designated by OSD and these statewide contracts are available to all Departments and other OSD-approved eligible entities. Departments may purchase from a statewide contract without having to execute additional contract documentation. While the strategic sourcing services teams (SSSTs) that create statewide contracts develop and manage the procurement and resulting contracts, it is the responsibility of each Department to maximize its use of these contracts by becoming an "educated purchaser." It is important that purchasers understand what is required from the contractor and where there is flexibility to negotiate within the contract specifications.

ii. Requirements and Guidance When Using Statewide Contracts

Contract User Guide: Each statewide contract has an OSD Contract User Guide, available on COMMBUYS under the contract Master Blanket Purchase Order (MBPO). Each purchasing Department is responsible for using the MBPO to acquire only those goods and services authorized by the contract. The Contract User Guide contains specific instructions for contract use, that may include solicitation of

quotes and use of required forms. The Request for Response (RFR) and other contract information, which are available on COMMBUYS, provide additional detail. Contract User Guides may be updated periodically to reflect changes in contract terms or pricing. Buyers are responsible for using the latest contract information before issuing a purchase order. If a Department has questions after reading the User Guide, please contact the Strategic Sourcing/Procurement Team Leader whose contact information may be found in the Contract User Guide.

a. Negotiate

Many statewide contract rates represent the ceiling or the highest rates that may be charged. Departments often have a choice of contractors on statewide contracts, with a range of rates, added value features, and prompt payment discount options. Departments are strongly encouraged and may be required by the provisions in the Contract User Guide to request multiple quotes from contractors on the MBPO (typically, at least three). When seeking quotes, Departments must provide contractors with adequate specifications documenting their requirements to ensure that “best value” may be obtained. This process must be documented with all quotes in COMMBUYS and related correspondence in the procurement files.

b. Document

OSD is responsible for maintaining the procurement files for the competitive bid process and ongoing contract management for statewide contracts. Each Department is responsible for maintaining documentation for quotes and transactions using statewide contracts. To the extent possible, the procurement file should reside on COMMBUYS. Documentation may include, but is not limited to, the following:

- Documents related to contractor selection and negotiation;
- Purchase Orders placed through COMMBUYS;
- Copies of all invoices and related correspondence;
- An accounting of all payments made;
- Copies of written notices or other correspondence with the contractor;
- For engagements involving a statement of work, document the receivables and deliverables, and information related to any disputes and resolution; and
- Any other relevant information about the contractor and its performance.

c. Communicate with OSD

OSD strives to obtain best value through statewide contracts. However, in some instances, buyers may become aware of more favorable pricing or other terms available. This information should be shared with OSD so that the SSST can determine whether additional concessions may be obtained from statewide contract vendors. Departments also should reach out to the strategic sourcing services lead (SSSL) when planning a large purchase. OSD often consolidates demand and leverages volume to obtain more attractive pricing. Department input is essential to helping OSD ensure that statewide contracts represent “best value” throughout the life of the contract.

For additional information on statewide contracts, please visit OSD's website, and click "Buy from a Statewide Contract."

d. Statewide Contract Recap

To summarize, statewide contracts include:

- *OSD Statewide Contracts*
 - Procured by OSD on behalf of all Departments. OSD is responsible for contract execution and management, retention, archival, and disposal.
 - MBPO created in COMMBUYS and Master Agreement transaction entered into MMARS by OSD.
 - Available to all Departments, municipalities, and other eligible entities.
 - Must be used by Executive Departments and non-Executive Departments that follow 801 CMR 21.00.
- *OSD-Designated Department Statewide Contracts*
 - Procured by a Department designated by OSD on behalf of all Departments. Through a documented agreement with OSD, the Department is responsible for contract execution and management, retention, archival, and disposal.
 - MBPO created in COMMBUYS and Master Agreement transaction entered into MMARS by OSD.
 - Available to all Departments, municipalities, and other eligible entities.
 - Must be used by Executive Departments and may be used by non-Executive Departments that follow 801 CMR 21.00.

iii. Exceptions to the Mandatory Use of Statewide Contracts

a. Request for Approval to Issue Bid for Goods/Services Available under Statewide Contract

Executive Departments are required to use statewide contracts 100% of the time. If a statewide contract covers the categories of goods/services sought, but a Department believes that the contract does not meet its particular business needs, it must obtain approval from OSD to issue a bid. Instructions for submission of such requests may be found in

b. No Statewide Contract Offers the Specific Goods or Services Sought

If no statewide contract is available for goods or services required, Departments may either:

1. Make purchases from a limited user contract, if authorized;
2. Issue an RFR; or
3. If it is an incidental purchase (non-recurring, under \$10,000), purchase directly and document.

- *Limited User Contracts: Using another Department's Bid/Contract*

For goods and/or services not available on statewide contracts, a Department may use another Department's competitive procurement covering commodities and services sought only if the solicitation and resulting contract (MBPO) authorize use of the contract. To determine eligibility to use a contract, the RFR must (1) identify the contract as a "Limited Department User" contract and (2) identify the user Department in the list of eligible users.

In COMMBUYS, limited user contracts available for use by other entities should indicate "Cooperative Purchasing Allowed" and identify the Executive Department(s) in the list of eligible users.

Note: If a Department issues a bid/contract that allows other named users, that Department accepts responsibility of contract management on behalf of those other named users. Each named user is responsible for the execution of purchase orders, Statements of Work (SOW), or other engagement-specific documents and their retention, retrieval, archiving, and disposal; however, the named users may not execute a separate contract document.

When issuing a Limited User Contract, Departments are not authorized to allow all other eligible entities to use it. Only statewide contracts, which require OSD approval, are available for use by all eligible entities. Departments are encouraged to contact OSD and propose statewide contracts.

- *Limited User Single Department: Departmental RFR/Bid*

When no other contract is available to meet its needs, a Department may issue a Request for Response (RFR) to establish a Limited User Contract.

RFRs communicate contract performance specifications and other applicable requirements to potential Bidders. RFRs also may be referred to as "solicitations," or "procurements." In COMMBUYS, RFRs are bids. RFRs are drafted by a Department to fit a particular procurement need based upon the complexity and total value of a contract. The goal of an RFR is to obtain best value commodities and services and to define the expected outcomes. Unless a procurement meets the requirements for an authorized competitive procurement exception (See the Procurement Exceptions section), an RFR shall be used to competitively procure goods and services. As described in Appendix B, OSD distinguishes between large (greater than \$150,000) and small procurements (up to \$150,000). Specific requirements apply to each.

B. Procurement Exceptions

As previously noted, **competitive procurement** is required to acquire **any** commodity, service, or both unless the procurement qualifies as a **competitive procurement exception under 801 CMR 21.05**.

Authorized exceptions, which are discussed below, include:

1. Legislative exemptions or legal restrictions due to a general or special law or other existing legal obligation;
2. Emergency situations that require the immediate acquisition of a commodity or service to eliminate the emergency;
3. Collective purchasing arrangements;
4. Interim contracts to prevent a lapse in contract performance;
5. Hiring contract employees; and
6. Incidental purchases.

In addition, although not a procurement exception, OSD permits issuance of Due Diligence Postings, as described in Section C, which utilize an expedited bidding process.

As with all procurement transactions, contracts executed under 801 CMR 21.05, competitive procurement exceptions must have written justification and documentation available for review in the Department procurement file. Insufficient documentation or abuse of the competitive procurement exceptions may result in the withdrawal of OSD-delegated procurement authority or other sanctions.

An exception from a competitive procurement does not relieve a Department from complying with the remaining provisions of 801 CMR 21.00 or other statutory, regulatory, or policy requirements. These include, but are not limited to, maintenance of a procurement file, documentation of purchasing activities in COMMBUYS, execution of all required contract forms, contract management, and quality assurance.

i. Legislative Exemption or Legal Restriction from Competitive Procurement

Sometimes the funding source (the state legislature or the federal government) will exempt a Department from the competitive procurement requirements through the enactment of a general or special law. A legislative exemption under 801 CMR 21.05(2) may recognize, through statute or line item, a unique business relationship that it desires the Department to pursue or may specifically name the contractor that may be awarded a contract.

A similar arrangement may be required through a legal prohibition such as a court order or contractual obligation, i.e., a requirement to use a named vendor for maintenance or else the warranty will be revoked. A copy of the language authorizing or supporting the exemption must be included as part of the contract and procurement file.

A Department that seeks to acquire services that another government entity is statutorily authorized to provide also falls under this exception. If the other government entity is another Department, then the Department must follow the Interdepartmental Service Agreement (ISA) policy issued by the CTR. If the other government entity is not statutorily authorized, but is uniquely situated to provide the services, then the Department must comply with the Due Diligence Posting Policy, as described in Section C below.

ii. Emergency Contracts

Regulation 801 CMR 21.05(3) recognizes that unforeseen circumstances may require Departments to procure goods or services on an emergency basis. Some reasons for emergency procurements include:

- The avoidance of imminent harm to the government;
- The provision of immediate mandated services;
- The provision of goods or services for the health, welfare, or safety of persons; and
- The prevention of further property damage due to extreme weather, fire, or Acts of God.

When possible, Departments should shop around for competitive prices for the emergency procurement.

Departments may enter into emergency contracts only for the period necessary to alleviate the immediate risk of harm, damage, or danger.

Extending emergency contracts to include other items that are not related to the immediate solution of the emergency is not appropriate. For example, an emergency contract during a power outage to provide backup power generators should not include the acquisition of other non-emergency products unrelated to the emergency. Non-emergency goods and services require the use of a statewide or limited user contract or a standard competitive procurement.

While Department heads must make this important determination, Secretariats also may establish a policy for administering emergency contracts. Departments are encouraged to work with the relevant OSD SSST or with other Departments to develop contingency plans for emergencies or to seek assistance when an emergency arises.

Departments are required to execute a contract with the entity selected to provide the emergency goods/services. This includes the appropriate version of the *Commonwealth Terms and Conditions* and a *Standard Contract Form* as soon as possible after the need for the emergency commodity or service has arisen. Emergency contracts also must be documented in COMMBUYS.

Note: OSD has compiled a reference guide of existing statewide contracts that could be used in an emergency that requires a specific commodity or service. That booklet, *Emergency Response Supplies, Services, and Equipment*, is available on OSD's website under "Publications and Reports."

C. Collective Purchase

801 CMR 21.05(4) recognizes that opportunities for maximizing the value of a procurement are available through "teaming" with other public entities in the procurement process. Under this competitive procurement exception, and with OSD approval, Departments may execute a contract for the provision of goods or services when an existing contract already has been competitively bid and established by federal agencies, other states, or any other public entity. (Please note: This exception does not refer to other procurement options such as teaming with other Executive Departments that

already have conducted a procurement for use by their own Department and other Departments. In these cases, competitive procurements have been conducted and an exception is not necessary.)

Collective purchasing, also referred to as cooperative purchasing, with other states, federal agencies, or any other public entity under 801 CMR 21.05 (4) requires OSD's prior approval. To use the collective purchase exception, Department staff may be asked to conduct a due diligence review and post a notice on COMMBUYS when it intends to join an already established procurement or contract.

Due diligence and the decision to use the collective purchase exception must be based on research documenting that the procurement is consistent with the requirements of M.G.L. Chapter 7, sections 22 and 22A and M.G.L. Chapter 30, sections 51 and 52 – that it is fair, open, and competitive, and that the contract terms (including price terms) represent best value to the Department. Research also should determine whether the procuring entity (federal, state, or other public entity) complied with any posting requirements of the World Trade Organization. In addition, the Department must create and maintain a procurement file, which includes documentation on all due diligence activities and instructions regarding use of the collective purchase contracts. Please see Appendix A for instructions to submit a request to OSD to use a Collective Purchase Contract.

Copies of all written documentation of the General Services Administration (GSA) or another state's Cooperative Purchase contract and instructions regarding use of their contracts must be maintained in the appropriate procurement file and purchases must be reflected in COMMBUYS. Supporting documentation is subject to review by the OSD QA Team.

i. Interim Contracts

Regulation 801 21.05(5) provides for interim contracts when either (1) an existing contract has been terminated or (2) the existing contract will end but the new procurement has not yet been completed. Under either scenario described below, Departments may be faced with an interruption in contract performance, thereby necessitating an interim contract.

a. Early Termination of an Existing Contract

When an existing contract has been terminated prior to its expiration, a Department may approach the pool of Bidders who submitted responses under the original procurement. A Department may offer a contract for full or part performance to the Bidder that submitted the next best value response.

The contract offer is limited by the contents of the original solicitation and the Bidder's original response for the remaining duration of the original procurement. If the Bidder is willing to negotiate within the scope of the original procurement, the Department may execute a contract with the Bidder.

If a Bidder does not want the contract or wants to substantially change the original response to increase prices, the Department may go to the next highest scoring Bidder. If the Department is

unable to negotiate a contract with the original pool of Bidders, it should proceed with a competitive procurement (unless the lapse would create an emergency situation).

b. Interim Contracts Due to a Delay in a New Procurement

Interim contracts also may be used to prevent a lapse in performance when a procuring Department has commenced a new competitive procurement prior to the termination date of an expiring contract, but has not yet completed the procurement. This interim contract period should not exceed three months. The procurement file should contain documentation that the procurement was commenced in a timely fashion and that the delay was unforeseen and legitimate.

Interim contracts must be documented in COMMBUYS.

ii. Contract Employees

When Departments require the services of an individual, they must determine if the service qualifies as a competitive procurement exception (contract employee) under 801 CMR 21.05(6) or is subject to a competitive procurement (independent contractor).

Departments must complete the *Employment Status Form*, available in the *Individual Contractors: Contract Employees vs. Independent Contractors* available via link at the end of this section.

To make this determination, Departments must adhere to M.G.L. c. 149, s. 148B, which contains the three-part test summarized below. A worker is a contract employee (exception) **unless**:

1. The individual is free from control and direction in connection with the performance of the service, both under his/her contract for the performance of service and in fact;
2. The service is performed outside the usual course of the business of the employer; and
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed;

In which case, the worker is classified as an independent contractor.

While the 20 factors that the IRS utilizes in its SS-8 test may help determine whether the first condition above has been addressed, the other two conditions must be satisfied as well. In addition, the Attorney General has interpreted this law to mean the test is rigid and should result in more individuals being considered contract employees (competitive procurement exception) than independent contractors. Thus, the burden is on the Department to defend a determination of independent contractor status.

Additional guidance pertaining to this exception is available in the associated policy entitled *Individual Contractors: Contract Employees vs. Independent Contractors Policy Guidance*, jointly issued by CTR and OSD: [Contract Employees vs. Independent Contractor](#)

iii. Incidental Purchases

As authorized under M.G.L. c. 7, s. 22, regulation 801 CMR 21.05(1) recognizes the procurement exception of an incidental purchase, defined as a one-time, non-recurring, unanticipated need for goods and/or services with a total dollar value of up to \$10,000. Incidental purchasing is designed to assist Departments in expediting simple purchases, while reducing the administrative burden and associated paperwork of purchasing small dollar items, thereby recognizing the fact that conducting a competitive procurement for certain types of purchases is neither cost-effective nor an efficient use of administrative and staff resources.

On the other hand, when a Department knows that repeated or multiple purchases for the same commodity or service are planned or are a possibility, the commodity or service is not an exception and must be competitively procured.

Exceptions: There are two notable limitations for incidental purchasing:

1. **Statewide Contracts:** For all incidental purchases by Departments using 801 CMR 21.00, statewide contracts must be used, if available. If a commodity or service may be purchased from a statewide contract, regardless of the dollar value, it does not qualify as an incidental purchase (procurement exception used for non-recurring limited price purchases for which no statewide or limited user contract is available).
2. **Restrictions on certain MMARS object class/object codes:** Certain object codes, such as contracted employees, legal services, and leases, cannot be considered incidental purchases, regardless of the dollar value. The incidental purchase exception does not apply to legal services because they require approval by the Governor's Chief Legal Counsel and a competitive procurement regardless of the dollar amount.

In addition, before utilizing an incidental purchase, a best value determination for incidental purchases should weigh the value added (cost and administrative savings) of incidental purchasing against the benefits and protections of a procurement and contract. All Departments are expected to effectively manage a \$10,000 incidental purchase limit. Departments are responsible for developing and implementing internal controls that comply with the incidental purchasing guidelines and monitoring their purchasing patterns to ensure proper usage. Failure to follow incidental purchasing guidelines may result in the lowering or rescission of a Department's incidental purchase limit, or, in the event of consistent non-compliance, may result in the removal of delegated purchasing authority.

a. Transaction and Documentation Required

The encumbrance transaction for incidental purchases is the General Accounting Encumbrance (GAE) document and the payment transaction is the Incidental Payment (INP) document. For most incidental purchases, only the invoice is required. Departments may determine it is in their best interest to execute the *Commonwealth Terms and Conditions* and *Standard Contract Form*.

If they elect to do a Contract Encumbrance (CT) document for services, Recurring Payment Order (RPO), or Commodity Purchase (PC) order, the applicable form(s) are required.

For an Incidental Purchase Transaction Matrix, please see Appendix C

D. Additional Due Diligence Requirements

For Certain Purchases that Do Not Qualify as Procurement Exceptions

There may be instances where a Department:

- is offered something at no cost or well below market cost;
- needs to purchase new proprietary licenses, products, or services for systems or software that have been competitively procured and may be provided only by the original vendor; or
- seeks to acquire services that another governmental entity is uniquely situated (but not statutorily authorized) to provide.

While OSD does not recognize these instances as procurement exceptions, they represent situations in which a more streamlined process may be used to acquire goods and services and comply with the fair, open, and competitive requirements of the Commonwealth's procurement process.

Regulation 801 CMR 21.00 does not recognize "sole source" procurements as a competitive procurement exception. These procurements, in which only one Bidder is deemed to be capable of providing the commodity or service, are counterproductive because they eliminate competition and diminish the "pool" from which Departments select quality contractors.

A Bidder may appear to the Department to be the only one capable of providing a commodity or service. In these situations, the Department must receive approval from OSD and identify the transaction to other potential Bidders by posting an RFR or a notice of intent to contract with a specific vendor on COMMBUYS. If no additional responses are received, the Department may proceed with a contract. If additional qualified Bidders respond to the RFR/notice, then the basis for a competitive procurement has been established and the responses should be evaluated. See the Due Diligence Posting Template on the OSD Forms webpage for details on how to post to COMMBUYS.

i. Acquisitions and Purchases Subject to Due Diligence Requirements

OSD's Due Diligence process may be used for the following types of transactions:

a. Best Value Offers

Departments may receive offers from vendors or be presented with an opportunity that is either a no cost or below market cost offer, and may appear so beneficial or advantageous a competitive procurement may seem unjustifiable. An example includes the continuation of training services for customized software purchases. An offer cannot be considered best value

unless and until a Department has taken steps to confirm, through a public process that is fair, open, and competitive, that it represents best value and that there is no other Bidder that may meet or beat the deal being offered.

b. Proprietary Products

Departments that have conducted a prior procurement and purchase of a product or service that is proprietary in nature may seek an upgrade, maintenance, support, repair, expansion of the product, or addition of peripherals to the product that also are proprietary. Such proprietary products or services may include license terms that would void a warranty, for example, if technicians not certified by a specific company service the product or if software programmers not employed by the manufacturer of the specific proprietary software make changes to the source code of that software, etc. Where there only is one vendor available, licensed, or capable of providing such products or services, a Department must conduct its due diligence to establish that the product truly is proprietary in nature and to acquire the good and/or service from that source.

c. Services Provided by Another Government Entity

When a Department seeks to acquire services that another governmental entity is uniquely situated to provide, it may do so after posting notice of its intent. The posting requirements for this option do not apply to those services that another governmental entity is statutorily authorized to provide, which would fall under the “Legislative Exemption or Legal Restriction from Competitive Procurement” exemption contained in this Policy and would not require any further due diligence by the Department.

Additional information about Due Diligence posting requirements may be found in [Appendix A](#).

d. Pilot Programs or Product/Service Demos

Pilots may not be procured through a Due Diligence approach. Departments may seek to conduct a pilot program or demo to test or experience new goods or services, and pilot programs sometimes are initiated by a Department or by a vendor. Pilot programs should be limited in scope and duration and Departments should determine if they want to take this solicitation approach. If yes, then an RFR must be developed; if no, then the Department should not move forward.

Offers to provide goods or services as part of a pilot may not be accepted by Executive Departments without issuing an RFR and giving all Bidders an opportunity to provide the same or similar pilot opportunities. Departments must evaluate all bid responses and may choose one or multiple pilot offers if they meet the requirements put forth in the RFR. RFRs should be written to include language that allows Departments to accept successful pilot results, under what conditions, and negotiate a longer term agreement if it is in the Department’s best interest to do so. Departments also may choose to conclude the pilot, evaluate effectiveness, and develop a new RFR that incorporates lessons learned and required/desired qualities for that

good or service, and issue a new RFR to obtain the best possible responses with a clear description of the Department's refined requirements.

ii. Recap: Decisions Required for Developing a Request for Response (RFR)

1. Review current available sources for the commodity or service, or circumstances that would obviate the need for a procurement:
 - a. Current statewide contract for required commodity or service.
 - b. Another Department with a similar procurement that allows purchases by identified Departments.
2. Determine the type of procurement (commodity and/or service) needed. Also, determine the object code (utilizing the [Comptroller's Expenditure Classification Handbook](#)) for the type of procurement to confirm the procurement requirements and transactions that will be used.
3. Ensure that funding for the procurement is properly set aside so that funds are available when a contract is executed and performance is needed. Please see the Comptroller's State Finance Law and General Requirements, available on the [Comptroller's website](#) for additional information on funding requirements.
4. Confirm whether a competitive procurement is required. In addition to due diligence postings, which allow for an expedited procurement process, authorized competitive procurement exceptions under 801 CMR 21.05 include:
 - a. Incidental purchases;
 - b. Legislative or statutory exemption from competitive procurement, including grants that require a specific item or service provider be used;
 - c. Emergency contracts;
 - d. Cooperative purchasing with other states, federal agencies, or any other public entity;
 - e. Interim contracts; or
 - f. Contract employees.
5. Determine the estimated dollar value of the contract for its entire duration. There are three established dollar value thresholds that determine the type of RFR or approach to a procurement need, each with varying degrees of requirements and complexity. They are:
 - a. A large procurement with total value greater than \$150,000;
 - b. A small procurement with total value equal to or less than \$150,000; or
 - c. An incidental purchase with total value less than \$10,000.

If, after reviewing this list of questions, a Department decides to proceed with a Departmental procurement, they must follow the guidance for conducting a competitive procurement explained in Section D.

E. Conducting a Competitive Procurement

i. Using a Strategic Sourcing Approach to Obtain Best Value

OSD's Procurement Regulation 801 CMR 21.00 grants Departments significant discretion in building and implementing their own procurements if the commodity or service is not available from a statewide contract. The competitive procurement process described in this document applies to **all** competitive procurements for commodities and services (including independent contractors), other than those identified as competitive procurement exceptions explained earlier in this document.

The competitive procurement process the Commonwealth uses is the "Seven Steps of Strategic Sourcing" approach to identify objectives and to develop quality procurements. Within the many tasks identified in these steps, OSD has incorporated the minimum requirements for a competitive procurement process explained below.

"Strategic Sourcing" refers to the planned, systematic, and enterprise-wide procurement process that continuously improves and re-evaluates the purchasing activities of the enterprise.

Strategic Sourcing's primary objectives:

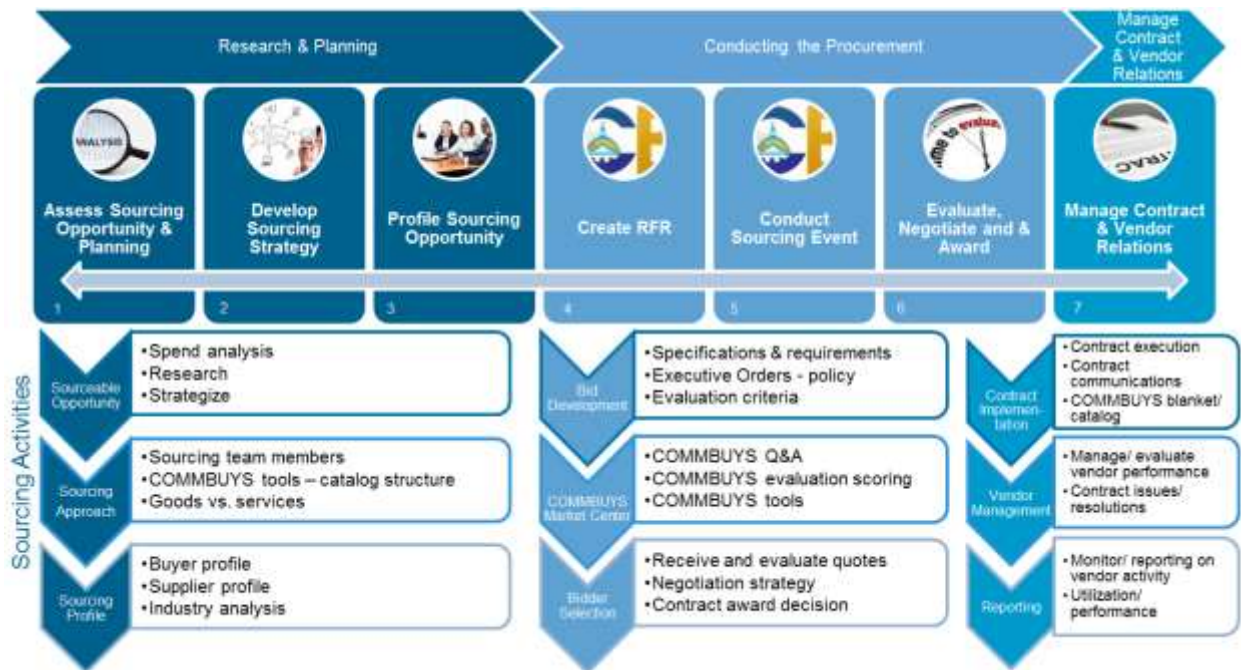
- Reduce the costs of goods and services.
- Capture resulting savings.
- Determine areas of risk to determine the level of acceptable risk a Department is willing to accept.
- Create contractual alliances with suppliers to support the long-term goals.
- Maintain and improve product quality.
- Improve business functions.

The seven-step approach ensures that the lifecycle of a procurement is conducted proactively through thoughtful planning, careful analysis, open competition and strong negotiation, and achieves clear, beneficial results. The process requires procurement professionals to become actively involved in each unique phase, allowing them to focus on higher value activities versus solely transactional purchasing activities. Examples of higher value activities include supplier management, market research, and meeting with internal customers to understand how their needs currently are being met and/or are potentially changing.

OSD regularly offers in-depth training on Strategic Sourcing, including a Certificate Program. This Certificate Program is required for all Secretariat and Department CPOs, and strongly recommended for Department personnel who are responsible for conducting procurements in their agencies.

The following chart provides a big picture view of the seven steps and the expected activities and outcomes.

a. The Seven Steps Strategic Sourcing Approach



Note: References to procedures for COMMBUYS, the Commonwealth’s online Market Center, included here are general in nature. Detailed, COMMBUYS-specific “how to” instructions, Job Aids, and user tips are available on the [COMMBUYS Resource Center](#) webpage.

ii. Understanding “Best Value”

The Operational Services Division follows the Seven Steps of Strategic Sourcing to deliver “best value,” meaning that OSD believes it is in the best interest of the Commonwealth for solicitation evaluation criteria to incorporate a broad range of business and cost factors that focus on getting what the customer needs. A successful procurement should consider additional factors, including qualitative and/or performance measures.

“Best Value” procurement has the following characteristics:

- Follows the Seven Steps of Strategic Sourcing framework.
- Describes the problem and need of the Department or Commonwealth.
- Is designed to obtain the desired results of the Department (i.e., an effective contract with qualified, stable, high-quality vendors) in the most efficient and effective manner.
- Includes bid evaluation criteria that consider quality, risk, desired outcomes, timeliness, the industry that is responding to the procurement, alternative approaches and options, incentives, and appropriate life of the contract term.
- Articulates clearly the Key Performance Indicators (KPIs) that will be utilized during contract management to determine the level of vendor performance.

- Allows Departments to design a procurement process that achieves results within their required timeframes. Best value is defeated if the procurement process is cumbersome and inefficient.
- Does not overburden potential respondents with overly restrictive requirements or specifications.
- Identifies and devotes staff and administrative resources proportionate to the complexity, priority, and cost of the procurement at a Department level.
- Enables expedited simple purchases that present little systemic risk by following streamlined purchasing procedures and by allowing eligible Departments with the appropriate delegation authority to process without secondary transaction approval all contract purchases for commodities, and services up to a specified dollar level.
- Allows flexibility in developing alternative contract purchasing and business relationships, such as the use of cooperative contracts or a shared-risk approach to project-based contracts.
- Encourages, and results in, maximum competition from all qualified vendors to achieve pricing, quality, and customer service benefits. Fostering healthy competition ensures that Bidders will continue to strive for excellence in identifying and meeting Department needs.
- Finds ways to include participation by diverse businesses. Departments must develop realistic procurements that are fair to Bidders. If procurements are seen as too costly or too restrictive, vendors may be deterred from bidding and competition could be decreased, shrinking the pool of available quality vendors.
- Includes consultation with OSD's Strategic Sourcing Services Teams to identify new statewide contracting opportunities.

iii. Elements and Requirements of the Strategic Sourcing Process

OSD has developed minimum requirements to assist Departments during the procurement process. These requirements are incorporated in the Seven Steps of Strategic Sourcing process identified above, and Departments are responsible to address these requirements for each competitive procurement. The main outcome of the competitive procurement process is to receive best value. The elements outlined here are designed to assist Departments in conducting a complete and efficient procurement process without unnecessary restrictions, while including the best practices of Strategic Sourcing.

A successful procurement begins with careful research and planning to assess and fully understand the sourcing opportunity, conduct market research, and develop objectives for the procurement.

a. Research and Planning

Activities undertaken during the first three phases of the seven-part strategic sourcing approach include:

- Assessing sourcing need/opportunity - collecting data, developing a buyer profile, evaluating existing contracts (if any), and understanding buying patterns.

- Conducting an industry analysis - understanding the vendor landscape for the desired goods or services, understanding the costs of the procurement and contract, and the value it should deliver.
- Assessing how COMMBUYS and other tools might be used during and after the procurement.

Essential Elements

- Designating a sourcing team and lead.
- Establishing a procurement file.
- Researching and developing a deep understanding of industry trends, buyer needs and buying practices and vendor landscape.
- Determining level of risk and mitigation approaches.
- Clarifying how you will measure the success of the procurement.



b. Conducting the Procurement

The second three phases of conducting a successful procurement include developing the bid itself, determining how COMMBUYS will be incorporated into the procurement process, and determining how Bidders will be evaluated and selected.

Essential Elements

- Drafting the evaluation criteria.
- Determining the procurement calendar.
- Creating the Request for Response (RFR).
- Issuing Bids in COMMBUYS and notifying vendors via COMMBUYS.

- Evaluating Bidder responses.
- Conducting contract negotiations.
- Notifying all respondents of contract execution.

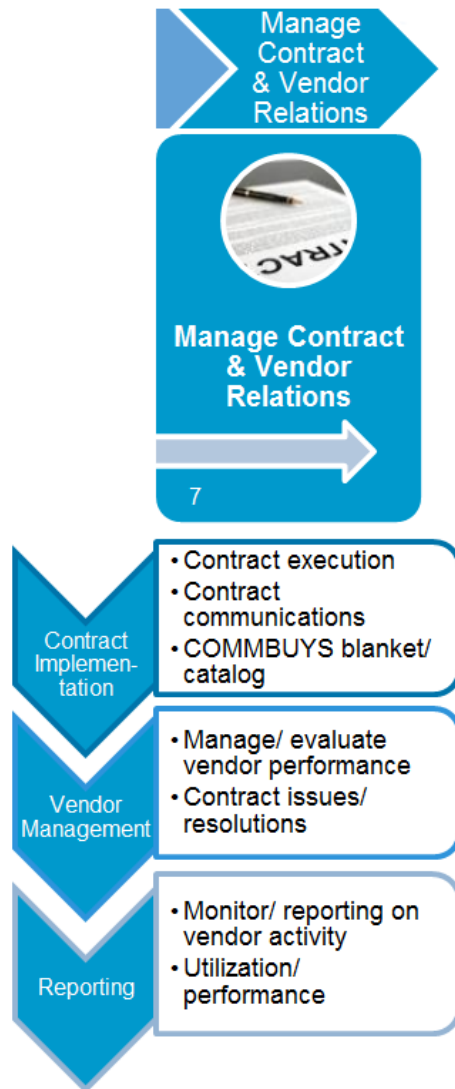


c. Managing Contract & Vendor Relations

The last phase of the seven-part Strategic Sourcing process involves the contract implementation, vendor management, and reporting functions relating to successful procurements.

Essential Elements

- Creating MBPOs and catalogs in COMMBUYS.
- Maintaining and updating catalogs.
- Tracking Key Performance Indicators.
- Vendor Performance Monitoring.
- Customer Satisfaction.
- Making determinations on renewals.



iv. Designating a Strategic Sourcing Team and Lead

Designation of a Strategic Sourcing Services Lead (SSSL) and a Strategic Sourcing Services Team (SSST) that actively participates in each of the Seven Steps of Strategic Sourcing is one of the first critical steps in conducting a procurement.

The SSSL is responsible for overall management of the procurement – from team and solicitation development to evaluation and contract award. The SSSL:

- Provides guidance and expertise throughout the RFR and contract process;
- Assumes direct oversight, management, and implementation of the procurement;
- Coordinates and facilitates a team of people with appropriate skills to assist in the procurement;
- Ensures that cooperative, consensus-based processes and decisions are employed by team members;

- Acts as the primary point of contact for all matters related to the team's procurement calendar, contract management, requests for assistance, and customer satisfaction;
- Determines the scope of the RFR, duration and funding; and
- Is responsible for managing and documenting the procurement process.

A well-rounded SSST is a key ingredient to the success of an effective procurement. It should be comprised of representatives from Department(s) that have an interest or expertise in the commodity/service to be procured, including:

- Experts and end users of the product and/or service to be purchased and associated policies/regulations; and
- Members with procurement expertise, including legal and technical representatives and Supplier Diversity Program Coordinators; and
- Members who are skilled in finance and accounting.

Depending on the complexity of the procurement, a SSSL may have two sets of team members:

- Voting Members: restricted to state employees of the procuring Department and any other member who will be using the contracts. They evaluate responses and select Bidders.
- Advisors: provide advice and counsel.

If outside consulting assistance is used, the consultant(s) generally may not compete for the business solicited in the RFR(s) with which the consultant has been involved and should sign a non-disclosure agreement developed by the Department. Also, the SSST members may consult with any internal Department personnel or seek guidance from other state Departments or consultants for clarifying particular areas of the RFR (technical specifications, qualifications, cost, payment structure, etc.). The nature of the inquiry and other relevant information should be documented in the procurement file.

a. Strategic Sourcing Team Charter

An important tool for the SSSL to have in place by the first meeting is the Team Charter. The Charter must include:

- The title of the procurement and a general description of the intended scope.
- A clear and concise description of what is expected of the team and each member of the team.
- Identify all team members by name and a description of their role on the team.
- A description of team member expertise, characteristics, and skillsets.
- Boundaries that provide the team details of the parameters within which they will work (confidentiality, impartiality).
- A high level (subject to change) timeline of the procurement process, built around the Seven Steps of Strategic Sourcing.
- A place where all team members sign the charter to show a commitment to the effort.

The Charter should be distributed in advance of the first official sourcing meeting that allows potential members to learn what will be expected of the team and the roles that each person will have as part of the SSST. (See Forms Page on OSD website for Sample Team Charter.)

b. Membership Terms Agreement Form

Team members are required to sign a *Membership Terms Agreement Form* at the beginning of the procurement process (see the OSD Forms webpage on the OSD website). This agreement describes conflicts of interest, confidentiality, nondisclosure, and public record requirements that team members must follow, and confirms that team members clearly understand their responsibilities and the importance of maintaining high ethical standards during any strategic sourcing endeavor.

v. Optional Planning Tools

There are a number of approaches that may be used to develop information to be used for a procurement. These include conducting informational meetings with vendors, engagement of outside experts, multi-stage RFRs, use of a two-tier RFR to leverage pilot offerings, and issuance of Requests for Information (RFI). Each of these tools is optional. For instance, an RFI may be used to solicit information that may be used to enhance the procurement process or the quality of the commodities or services (including desired performance levels). RFIs traditionally are used to identify industry standards, best practices, potential performance measures, and price structures. They also are used generally to ascertain the level of interest of prospective Bidders in current or future procurements.

Note: Departments conducting an RFI should follow instructions in the COMMBUYS Resource Center for posting on COMMBUYS.

vi. Creating and Maintaining a Procurement File

801 CMR 21.06(1) requires Departments to maintain a paper or electronic file for each procurement. If a Department chooses to maintain paper records, certain records also must be scanned and stored in COMMBUYS. At a minimum, the following parts of the procurement file must be kept electronically on COMMBUYS: RFR, Bidder Q&A, Amendments, bid responses, evaluation criteria and final scores, and awarded vendor list. All procurements created by Level III Departments must retain electronic versions of these procurement records in COMMBUYS. The procurement file must include all information concerning the development and release of a bid RFR, Bidder selection, contract negotiation, the award of a contract, and debriefings. An individual(s), usually the SSSL, must be responsible for the creation, maintenance, and on-going contract management of each procurement file. OSD, or its designee, maintains procurement and contract files for statewide contracts. The OSD QA unit periodically reviews the procurement files to determine compliance with these requirements. Failure to comply may result in the removal of delegated procurement

authority of the Department. Disposal of the procurement file must be handled in accordance with the records retention and disposal requirements of the Secretary of the Commonwealth.

The procurement file serves two primary purposes: 1) it provides an accurate record of the procurement process (RFR development, evaluation, and selection), and 2) it serves as a contract management tool to monitor and document contract performance and activity.

The procurement files should be detailed enough to enable an individual with no knowledge of the process to reconstruct an accurate picture of the procurement process and contract performance. COMMBUYS procurement and contract files are maintained electronically and provide transparency to government, business, and the public.

When reviewing a contract or procurement, the OSD QA Teams or other oversight agencies will require the entire contents of the procurement file. In addition to the procurement records that must be maintained in COMMBUYS, the file must identify the location of items listed below, which include the most common items that generally are contained in a procurement file.

a. Standard Procurement File Contents

- RFR/RFQ and amendments, including all applicable attachments (must be available electronically on COMMBUYS).
- Notes, minutes, or other related materials generated during the RFR development and Bidder selection process.
- Record keeping related to the SDP, SBPP, and/or purchase and use of EPPs.
- List of attendees or sign-in sheet at Bidder's conference (if offered).
- Copies of questions and answers provided by the SSST, if applicable (must be on COMMBUYS).
- Correspondence to/from Bidders.
- Written summary of the evaluation process, completed evaluation forms, and meeting minutes/notes.
- Evaluation criteria and any amendments (with reasons for the amendments).
- Notes from Bidder presentations and demonstrations.
- Clarification documents (if required).
- Reference checks.
- Recommendation for selected Bidder(s).
- Notification of contract execution.
- Responses from non-selected Bidders (available on COMMBUYS).
- Debriefing requests and related correspondence or public record/Freedom of Information Act (FOIA) requests.
- Evaluation final results must be available on COMMBUYS.
- Any other required forms or additional information as required by policy.

b. Contract Materials to Include in Procurement File

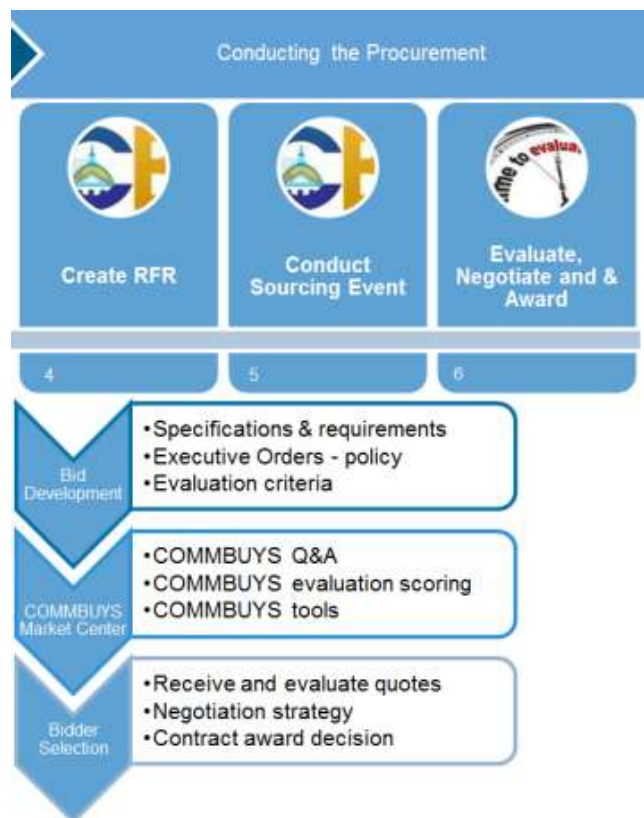
- *Standard Contract Form* (executed) - Original with applicable attachments and other negotiated items. All amendments/renewals, with attachments or other supporting documents.
- Copy of the applicable *Commonwealth Terms and Conditions* or verification that this form has been filed on the MMARS Vendor/Customer table.
- Copy of the RFR or screen print of the COMMBUYS Contract Summary page (Master Blanket Purchase Order) containing the RFR title and reference number.
- Selected Bidder's response (including any negotiated items, additional conditions, and forms) or location of electronic file of bid submission through COMMBUYS.
- Documentation related to payments (invoices, etc.), performance, contract monitoring and evaluation, agreements, correspondence, contract compliance, and negotiations pertaining to options to renew.

vii. Conducting the Procurement

The second phase of Strategic Sourcing is Conducting the Procurement. This includes developing the bid itself, determining how COMMBUYS will be incorporated into the procurement process, and determining how Bidders will be evaluated and selected.

Essential Elements

- Drafting the evaluation criteria.
- Determining the procurement calendar.
- Creating the Request for Response (RFR).
- Issuing Bids in COMMBUYS and notifying vendors via COMMBUYS.
- Evaluating Bidder responses.
- Conducting contract negotiations.
- Notifying all respondents of contract execution.



viii. Drafting the Evaluation Criteria

The objective in developing evaluation criteria prior to developing the final solicitation is to identify the specific factors that will be used to determine the suppliers that best fit the needs of the Commonwealth and to ensure those factors are specified in the RFR.

As part of the Seven Step Strategic Sourcing process, teams will have investigated the marketplace, analyzed spend data, industry trends, Commonwealth needs, and developed a work plan. The results of that effort clearly should identify the outcomes required and desired from the procurement. The evaluation criteria also will set forth the level of risk that the Department is willing to assume. In most instances, the less risk a Department assumes, the greater the cost for the goods or services. Developing evaluation criteria helps to assess the level of reasonable risk the Department is willing to undertake. Once the targeted outcomes are identified, the logical next step is to decide how you will evaluate Bidders and their bid responses to achieve those outcomes.

Teams are encouraged to think carefully and creatively when considering the approach to evaluation criteria. A problem-solving RFR, where the problem that needs a solution is stated, and the Bidders are free to offer creative solutions, will have a broader and a more unique set of criteria than a more conventional bid for goods or services. An RFR for well-defined and clearly specified goods or services may contain more typical evaluation criteria such as price, quality, or expertise level.

The SSST should determine a list of supplier selection criteria to be used in developing and scoring the suppliers' responses. The Team should prioritize the key parts of a response to an RFR in order of importance that may include, but are not limited to, business needs, cost, qualifications of Bidders, and responses to solution-based issues. The evaluation criteria may take into consideration a variety of information, such as the written response, the oral presentation, past performance of the Bidder, references or recommendations, individual satisfaction surveys, and monitoring reports. In developing evaluation criteria, the Team should consider whether oral presentations or product demonstrations will be required and whether a multi-stage evaluation process should be used to select vendors for the second phase of evaluation. The criteria also should contemplate how the information obtained from oral presentations or demonstrations will be used for developing final scores.

SSSTs have significant flexibility in selecting evaluation criteria. They may choose to develop a comprehensive evaluation tool that details the specific areas to be evaluated, criteria to be used in scoring, and the relative importance or weight associated with each component. They may choose an alternative approach and develop general areas to evaluate such as oral presentation, quality assurance, accreditation status, warranty, references, years of experience, past and proposed performance, or proposed cost. Either approach is acceptable as long as the areas that form the basis of the evaluation criteria are referenced in the RFR document itself.

To ensure fairness in evaluations, the evaluation criteria or considerations used to select or disqualify a Bidder must reflect requirements or considerations that are specified in the RFR. The SSST must not draft the RFR and evaluation criteria in such a manner as to be unduly restrictive. Bidders must have notice in the RFR document of any requirements. Detailed evaluation criteria may be included in the RFR if the SSST determines that such guidance to prospective Bidders is in the best interests of the procurement and could result in enhanced or higher quality responses. RFRs should clearly state whether failing to meet requirements will result in loss of points or disqualification.

The evaluation criteria should enable the SSST to fairly evaluate Bidders and determine which Bidder's offer represents best value. The SSST should prioritize the key parts of an RFR response in order of importance. The evaluation criteria may take various sources of submitted information into consideration such as the written response, the oral presentation, evaluation pilots, past performance, references, individual satisfaction surveys, and Departmental and monitoring reports.

If necessary, evaluation criteria may be modified based upon amendments to the RFR. Any amendments must be finalized prior to the review of any responses. Reasons for amendments to an RFR and/or evaluation criteria should be documented and included in the procurement file.

SSSTs should take the following into consideration, if applicable, in developing their evaluation criteria:

- Small Business Purchasing Program (SBPP) Requirements (mandatory for small procurements).
- Supplier Diversity Program (SDP) Requirement (mandatory for large procurements).
- Agricultural Preference (mandatory for purchases of agricultural products; see OSD Forms webpage, Required RFR specifications).

- Nutrition Requirements (mandatory for food purchased and served; see OSD Forms webpage, Required RFR specifications).
- Environmentally Preferable Products (EPP) Procurement Requirements (if applicable, see OSD Forms webpage for sample language and an EPP vendor business practices form).
- Specific Requirements related to Information Technology (including bids using capital bond funding, as well as specifications specific to security, accessibility, and standards and policy requirements) may be found at [MassIT's Enterprise Policies and Standards website](#). MassIT's procurement templates and materials may be found at [MassIT's Procurement Forms & Boilerplate Language website](#). For further guidance, please consult MassIT.
- Pursuant to Appendix A of the Enterprise Information Technology Acquisition Policy, Departments using Statewide Contracts for capital-funded projects over \$50,000 must post such procurements as Open Bids on COMMBUYS. Such bids must include the public records notice and clear evaluation criteria as specified in the above-mentioned policy. See: [Executive Office for Administration and Finance Enterprise Information Technology Acquisition Policy website](#).
- To procure outside legal services, Executive Departments must follow M.G.L. c. 30, s. 65; 801 CMR 21.01(2)(b) and 21.07(3)(c), the legal services procurement policies below and any additional requirements issued by the Governor's Chief Legal Counsel and/or the Office of the Attorney General. Additional guidance pertaining to this policy and the required form is found in the associated policy entitled [AGO Memo on the Review and Approval Process for Legal Services Contracts](#): <http://www.mass.gov/ago/docs/ourorganization/review-approval-process-legal-services.pdf>.

For each mandatory requirement, OSD publishes a related specification that may be found on the OSD Forms webpage. Additional details about the evaluation process may be found in the RFR process description, below.

a. **Mandatory Evaluation Criteria**

In general, the SSST has discretion to develop the bid evaluation criteria. However, the following specific requirements must be included in bid evaluation criteria:

- *For small procurements (up to \$150,000) only:*

Small Business Purchasing Program (SBPP) Requirements: Executive Departments must award contracts for Small Procurements (all procurements of goods and services with a total value of less than or equal to \$150,000) to verified COMMBUYS-registered small business Bidders participating in the Small Business Purchasing Program (SBPP) (1) if a response is received from such an eligible small business, and (2) if their response meets the Department's established best value criteria. The SBPP does not apply to procurements with a total value of less than \$10,000 that are for one-time, non-recurring expenses (referred to as "Incidental Purchases") or to other procurement exceptions identified in this policy. For additional information and requirements about this program, please consult [OSD's Small Business Purchasing Program webpage](#).

- *For Large Procurements (total values exceeding \$150,000) only (optional for small procurements):*

Supplier Diversity Program (SDP) Requirement for Large Procurements: All large procurements over \$150,000 must include language that requires the submission of a Supplier Diversity Program (SDP) Plan. The SDP Plan submitted by a Bidder must be evaluated at 10% or more of the total evaluation. All Bidders, regardless of their certification status, are required to submit a completed SDP Plan Form 1 as part of their response. Go to the [SDP website](#) for additional guidance.

ix. Determining the Procurement Calendar

a. Bids Must Be Open for a Reasonable Duration

OSD does not establish a minimum duration for when bids must be open. Departments are obligated, however, to ensure that bids are open for a commercially reasonable period of time sufficient to allow multiple Bidders to prepare and submit quality responses. This duration will depend on the nature and complexity of the bid. However, goods and services Department bids with a total value of \$522,000 or greater require a minimum of forty (40) days' advance notice pursuant to the World Trade Organization (WTO) Treaty on Government Procurement. Consideration for the open duration should be decided as part of the overall sourcing strategy and may be influenced by the industry research conducted by the SSST.

b. Best Practice – Use of Bid Q&A

Communication between the SSST and Bidders outside of the formal Q&A process is not appropriate. See Section III.D. If a Department chooses to accept written questions regarding a Bid, all accepted written questions and answers must be published as part of the Bid record in COMMBUYS. This requirement may be met by using the COMMBUYS Bid Q&A functionality or by attaching a Q&A document to the bid. Departments may specify acceptable methods of submitting questions in the Bid documentation.

For questions asked through the Bid Q&A functionality, COMMBUYS will display the name of the vendor. Departments may choose to allow for vendor anonymity by posting questions and answers as a document attached to a Bid.

c. Bid Q&A Deadline

COMMBUYS does not prevent vendors from asking questions using the Bid Q&A functionality up to the Bid Opening Date/Time. In their bids, Departments may set a date/time after which they reserve the right not to respond to questions. Alternatively, Departments may inactivate the Q&A function at the time indicated to Bidders on the procurement calendar (this action does not require a Bid amendment). Departments are required to provide reasonable time between the date/time they cease to answer questions and the Bid Opening Date/Time.

d. Bid Amendments

Pursuant to 801 CMR 21.06(6), the SSST may, at any time prior to the execution of a contract for any reason and without penalty, amend a procurement record or change the procurement requirements, performance specifications, budget, or procurement schedule upon notice to Bidders. Notification must be posted on COMMBUYS. As a general rule, amendments occur prior to the bid submission deadline. In rare cases, an amendment may occur after the deadline for the submission of responses; in this situation, the Department shall provide notice and allow a reasonable time for the acceptance of amended or new responses from the Bidders who submitted responses and any new responses. Departments are discouraged from posting amendments after the closing date and time and should consider whether an amendment is significant enough to change the scope and requirements of the original procurement, in which case, the procurement should be canceled and a new procurement issued.

As a best practice, a bid amendment deadline should be established in the procurement calendar.

Note: For bid amendment instructions, please see the [COMMBUYS Resource Center](#).

x. Drafting the Request for Response

The Request for Response (RFR) is the heart of the procurement process. It communicates what a Department is seeking through contract performance specifications to potential Bidders. An RFR is posted in COMMBUYS as a “bid,” and it also is known as a “solicitation” or “procurement” and these terms are used interchangeably throughout this document. In COMMBUYS, Bidder responses are called “Quotes.” All Executive Departments (Level III) are required to post RFRs and receive Bidder responses electronically in COMMBUYS. Other Departments and entities are able, and encouraged, to use COMMBUYS for publishing solicitations.

a. RFR Templates

OSD has developed and maintains recommended RFR templates, which are located in the Bid Development and Evaluation Form section of the OSD Forms webpage. These recommended templates comply with the policies in this document.

xi. RFR Requirements

There are 10 items that represent the minimum requirements for an RFR:

1. Description or purpose of the procurement (commodity and service needs)
2. Acquisition method (fee-for-service, outright purchase, rental , term lease, Tax-Exempt Lease-Purchase or license)
3. Request for single or multiple contractors
4. Use of a procurement by a single or multiple departments
5. Anticipated duration of contract including renewal options

6. Compensation structures
7. Performance and contract specifications
8. Instructions for submission of responses
9. Deadline for responses and procurement calendar
10. RFR attachments/required specifications and language

Determination of the best use and combination of options from the 10 items presented below are driven by the sourcing strategy that the SSST develops.

See **Appendix F**

for Purchase of Service (POS) Bid Specifications and Guidance.

a. Description or Purpose of the Procurement

This section of the RFR must outline a Department's anticipated plan, purpose, or goals for the delivery of commodities or services. It is designed to brief potential Bidders about the environment, circumstances, and obstacles that a contractor will face. For many bids, this section will be brief, especially for simple, routine purchases. Details of the contract and performance will be included in the bid specifications sections. Depending on the size and complexity of the RFR, this section may combine the summary with the complete specifications.

b. Acquisition Method

RFRs are developed for the purchase of either goods/commodities (consumable or durable) or services, or both, as explained more fully below. Departments must use one (or more, if necessary) of these acquisition methods unless another method is legislatively authorized and approved by OSD. Some RFRs may include more than one acquisition method based on the needs of the Department.

- *Services*

Fee for service is another term for service contract, which may be unit based or project based (explained in the compensation structures section of this document, Section g. below).

Depending on the type and predictability of use of the service, this contract either will be a rate contract (amount per unit) or a maximum obligation contract (a total amount). There also are circumstances where a contract could have a maximum obligation section and a separate section based on rates.

Service contracts may have both commodities (such as materials) and services. However, the commodity components of a service contract must be in addition to the services.

Maintenance service contracts may be structured with separate rates for time and materials or a service call rate that includes both.

- *Commodities - Consumable or Durable*

Consumable: These commodities are “consumed” and have a limited useful life. Products such as paper, pens, light bulbs, and food usually are acquired through an outright purchase acquisition method.

Durable: Durable commodities, such as informational technology (IT) equipment, furniture, vehicles, etc., have a useful life that generally exceeds one year. Some durable commodities may have an insignificant purchase cost.

Acquisition of Durable Commodities: When deciding to acquire durable commodities, Departments and Strategic Sourcing Services Teams (SSSTs) should assess their requirements and consider these options:

1. **Outright Purchase:** Immediate ownership.
 - a. When the value of the individual commodity is \$50,000 or greater, this is considered a Commonwealth fixed asset.
2. **Rental:** Temporary short-term use without ownership
 - a. Limit six months
3. **Term Lease:** Temporary use without ownership for more than six months.
 - a. These leases must be reviewed for categorization as capital or operating.
4. **Tax Exempt Lease-Purchase (TELP):** Purchase of commodity with financing and ultimate ownership.
 - a. This should be reported as a capital lease. When the value of the commodity is \$50,000 or greater, it is considered a Commonwealth fixed asset.
 - b. Note: TELP Purchases require ANF and OSD approval.
5. **License:** Temporary use without ownership of intellectual property or software.

Obtaining best value always should guide the decision. Please see the associated guidance from CRT entitled *Acquisition Policy*,
<http://www.mass.gov/comptroller/docs/policies-procedures/fixed-assets/po-fa-acquisition.doc>.

- c. *Request for Single or Multiple Contractors*

The RFR must indicate whether the Department plans to award a single contract or multiple contracts. This decision depends on the Department’s needs, the market, the availability of Bidders, and other factors. If the Department is uncertain, the RFR should indicate that either choice is a possibility and Bidders should respond accordingly.

- *Qualified Contractor Lists*

Qualified contractor lists are a way by which Departments may ensure adequate coverage.

Qualification of Bidders is one method of identifying multiple contractors by establishing a set of criteria for inclusion on the list. Qualifications may include technical expertise, experience, quality, location, availability, rates, prices, or catalogs. Thus, Departments will have a ready source of contractors when needed. Qualified contractor lists generally reflect factors other than cost, particularly best value considerations. Such criteria include, but are not limited to, financial stability, past performance, expertise and skills (professional licenses), and references.

Qualified contractor lists do not guarantee work for any contractor, and a Department is under no legal obligation to use all of the qualified contractors. As part of strategy development, the SSST may decide to include an option to limit the number of contractors on the list, selecting only those who meet the minimum qualifications and provide best value. SSST's also may develop a strategy that clearly states the intention to manage the number of contractors by stating in the RFR that underutilization of contractors may result in contract termination or that underutilized contractors' contracts may not be renewed if they fail to secure a minimum level of business during the initial term of the contract. The RFR and the evaluation criteria should indicate these options clearly and the SSST must take into consideration how it will manage the multi-vendor contract over the term of agreement.

With qualified contractor lists when low cost is the primary selection criteria, it is a recommended best practice to issue requests for quotes when selecting a vendor for a specific engagement to obtain the greatest cost savings (if prices were not established as part of the qualification process). The RFR should identify this possibility. The quotes must be provided within the parameters of the RFR and the contractors' original responses.

- *Open and Rolling Enrollment Qualified Contractor Lists*

In addition to selecting a qualified pool of vendors for the duration of the procurement, RFRs for multiple contractors also may be Open or Rolling procurements. The Open method allows new Bidders to submit responses after the initial selection period at specified intervals or as deemed necessary by the SSST. The Rolling method allows Bidders to submit responses at any time during the procurement.

- *Open:* SSSTs must ensure that responses received during the open enrollment period (after the initial selection process) are handled in the same manner as any other RFR response. Bids may be designated as Open Enrollment upon creation of the bids in COMMBUYS and are posted as Informal Bids.
- *Rolling:* Under a Rolling Enrollment process the RFR never closes, allowing Bidders to respond at any point during the life of the solicitation. Managing rolling enrollments requires advanced planning by the SSST to ensure that submissions are

handled appropriately and in a timely fashion. Bids may be designated as Rolling Enrollment upon creation of the bid in COMMBUYS. In COMMBUYS, a Rolling Enrollment bid is posted as an Informal Bid with a Bid Opening Date set to be the same as (or before) the end date for the associated contract.

d. Use of a Procurement by a Single or Multiple Departments

RFRs should be drafted using one of the following two options identifying whether the RFR will be used only by the procuring Department or by multiple Departments:

- *Statewide Contract Procurement Conducted by OSD or an OSD-Designated Department*

This option is available for use only by OSD and its designees. These procurements are conducted and managed by OSD and Departments designated by OSD on behalf of the Commonwealth for specific RFRs. When formally designated to another Department, these procurements are conducted and managed by the designated Department on behalf of OSD and the Commonwealth. The designated Department and OSD execute a formal agreement specifying each Department's respective responsibilities.

- *Limited User Contracts*

This option is available to all Departments. These procurements are conducted and managed by a single Department or a self-selected group of Departments. One Department posts the RFR and executes contracts and amendments on behalf of the group. Any Department identified in the RFR as eligible to use the resulting contract, or later approved by the SSST (if this option was specified in the RFR), may purchase from the contract without having to execute additional contract documentation. Departments with permission to use these contracts are authorized to do so by the Principal Purchasing Agency (PPA) in MMARS. The issuing Department is responsible for all contract management, including on behalf of the other named Departments.

Note: Departments **may not** identify "all Departments" as users of a Non-Statewide/Limited User Contract. Only OSD and OSD-designated Departments may issue contracts for use by all Departments.

e. Anticipated Duration of the Contract, Including Renewal Options

While 801 CMR 21.00 does not prescribe any set limits for procurement duration, the RFR must identify the total "anticipated duration" of the contract, including options to renew. This duration must be stated in the RFR. The duration cannot be open-ended or ambiguous. The duration in the RFR takes precedence over any other dates that may be published on COMMBUYS or elsewhere. Therefore, determining the appropriate duration requires the consideration of a variety of factors, including the type of commodities or services, how often the business offerings within the commodity or service industry and business climate change,

the length of time the contract will be required (temporary or long term), the type and duration of the funding, and best value principles.

The Total Anticipated Duration cannot be negotiated for a period longer than listed in the RFR. The RFR Total Anticipated Duration is defined as the RFR Initial Contract Duration plus all listed “options to renew” (if options are identified in the bid).

Note: If an Initial Contract Duration is not listed in the RFR, then the *Standard Contract Form* must be executed for the entire period listed in the RFR under Total Anticipated Duration and the Department and contractor may not negotiate a shorter period.

f. Compensation Structures

This section of the RFR should be determined in conjunction with the acquisition method and duration to provide Bidders with enough information to submit an informed response. Please see **Appendix E** for more details on compensation structures.

- *Anticipated Expenditures*

Executive Departments may specify either an estimated dollar value or estimated units (including the unit of measure) in the RFR. These are estimates only and a Department is not bound by these figures. However, Departments must comply with SBPP and SDP requirements, which are specific to bid value.

- *Estimated Value*

Departments must determine if specifying the total estimated funding will assist Bidders in submitting best value responses. Departments may want to issue an RFR that identifies the total estimated funding for a project and evaluate Bidders based on the amount of service or the number of items the Bidder is willing to provide for the available dollars. Providing the total estimated funding also may make sense if the SSST is releasing a solution-based or problem solving-based RFR for responses or if the resulting contracts will have a maximum obligation.

Procurements should reflect the total procurement value, which represents the estimated initial contract duration and all options to renew.

- *Estimated Number of Units*

SSSTs may be reluctant to provide a structure for Bidders’ responses that would result in their matching an amount specified in the RFR. Further, the SSST may not want to limit the RFR to the maximum obligation cited. In that case, RFRs that result in the establishment of rate contracts (price per unit or service) do not specify a maximum obligation but provide the estimated number of units. If the number of units is unknown, Departments may wish to

include historical usage and may choose to notify vendors that there is no current estimate of quantities to be purchased from the contract.

- *Rate or Maximum Obligation Compensation Contracts*

Rate contracts are unit-based contracts that specify no maximum obligation in the RFR.

A rate contract is used when the rate per unit of performance (commodity or service) is known, but the number of units or contractors is either unknown or unpredictable. Departments may use a rate contract when they require flexibility or are unable to accurately predict (despite historical data) the number of units, the number of contractors, and other factors such as timing and length of service.

Maximum Obligation contracts are those that specify a total amount in the RFR.

The maximum obligation structure is used when the contractor is known and the use is predictable and measurable. Even if a maximum obligation is not specified in the RFR, a resulting contract may contain a maximum obligation that may be amended later.

The contractor is not guaranteed the maximum amount. The amount is the maximum the contractor may be paid if all units and services are provided. It is not a guarantee of payment, service, or quantity of units.

There are a wide variety of ways to structure compensation in a competitively bid contract. See **Appendix E** for more detailed descriptions of common compensation structures that may be either rate or maximum obligation.

- g. *Performance and Contract Specifications*

In addition to outlining the overall goals of the procuring Department, RFRs should include detailed performance and contract specifications. If the procurement is relatively simple, this information may be combined with the Description and Purpose of the Procurement section.

- *World Trade Organization/Government Procurement Agreement*

If the total value of a procurement for commodities and services is at least \$522,000 (this threshold is modified from time to time by the World Trade Organization) over the life of the procurement (initial duration and all options to renew), the procurement must be advertised for a minimum of 40 days before the Close/Deadline (bid open/due) Date. This requirement may be satisfied by publishing a Notice of Intent to Procure on COMMBUYS prior to issuing the RFR. In certain situations, this time period may be reduced.

There are limited exemptions to WTO requirements as follows: transportation services, public utilities services (including certain telecommunications services), printing services, research and development services, services/commodities provided by disadvantaged persons, services/commodities provided within depressed areas under development,

products of prison labor, services/commodities that promote the environmental quality of Massachusetts and certain federally related projects.

- *Reasonable Accommodation and Americans with Disabilities Act (ADA)*

The SSST must provide reasonable accommodations, including the provision of informational material in an alternative format to qualified Bidders who may have disabilities or other hardships. Requests for accommodation are addressed on a case-by-case basis. A Bidder requiring an accommodation must submit a written statement to the contact person for the RFR that describes the disability or hardship and the requested accommodation. Such requests should be submitted as early in the procurement process as possible to allow sufficient time to accommodate the request.

For more information on improving accessibility to procurements by Bidders with disabilities and other requirements, please contact the Massachusetts Office on Disability at (617) 727-7440 (voice and TTY).

- *Specifications of the RFR*

The bid should provide a thorough description of the commodities or services sought or clearly articulate the problem or challenge that the Department is trying to resolve and it also should include a detailed statement that describes the desired solution being sought by the Department. Information provided must be sufficient to allow Bidders to conceptualize and respond to the elements of the RFR, but not be so prescriptive as to preclude creativity and innovation in the Bidder's response. Bids should identify specific information required in the Bidders' responses. The specifications are very important since they provide Bidders with a complete and detailed description of the services and commodities. Care should be taken to include as much information as possible to clearly identify the range of required performance, including any planned, possible or potential future activities, and related commodities or services that might be added later. SSSTs determine the specific information to be included in this section of the RFR and that information may include the following:

- Goals and purpose of the procurement;
- Commodities or services being procured; and
- Specific service components or Bidder requirements without which a response would be considered incomplete or unacceptable.

The SSST also should consider any statutory, regulatory, or funding source requirements or restrictions that may impact the specifications of the RFR.

The SSST should provide all Bidders with notice in the RFR that changes and adjustments to the contract may occur during performance. Providing this notice gives the SSST flexibility during the contract term.

Although Departments have discretion in developing bids, there are specific terms that must appear in all procurements conducted under 801 CMR 21.00. As described in Section j., OSD publishes RFR – Required Specifications that are a required attachment to an RFR. Additional, optional RFR specifications that may fit a Department’s particular procurement requirements may be found on OSD’s Forms page and incorporated into RFRs as appropriate.

- *Performance Specifications*

Major performance specification areas are identified below. For additional categories to consider, please see **Appendix E**.

- *Sufficient Detail*

Providing “the big picture” of the procuring Department’s overall plan to potential Bidders will produce more realistic and cost-effective responses and reduce the likelihood of a challenge. The language should be specific, clear, and detailed so that a reasonable person with no experience with the RFR or the contract will be able to understand the expected performance requirements (including definitions of terms) without additional explanation.

- *Security Sensitive Information*

It is the Department’s responsibility to manage and safeguard security sensitive information during the procurement of commodities and services when posting on COMMBUYS. Departments must assess whether information contained in RFR documents that are made available through COMMBUYS or other public disclosure could jeopardize public safety if placed in the wrong hands. To mitigate this risk, an RFR may include a document that explains the Department’s procedure for allowing qualified Bidders to access the sensitive material. Departments should establish a procedure that ensures safeguards and control over the release of sensitive information, including, where possible, execution of a non-disclosure agreement or other assurances that the Bidder will use the information only in connection with the procurement process.

[MassIT’s Procurement Forms & Boilerplate Language website](#)

[MassIT’s Policies, Standards and Procedures website](#)

Note: COMMBUYS cannot check file content to determine the presence of security sensitive or personally identifiable information. **Departments are responsible for ensuring all posted file attachments are void of security-sensitive or private information.**

- *Contract Performance Expectations*

Defining expectations in the RFR is important to both the Department and Bidders. Bidders need to determine if the RFR represents an opportunity for them and to assess their capacity to meet or exceed the requirements. Bidders may be reluctant to compete if the

expectations of the Commonwealth are not clearly articulated. Vague or ambiguous requirements pose a significant risk in the eyes of a Bidder. Therefore, Departments should not leave the known details of performance to be resolved during contract negotiation or later. These “details” may substantially change the expectations of the contractor, resulting in higher costs and protracted negotiations or a limited number of vendors competing for the contract. Working through the details of performance standards after an award will delay contract execution and add cost to the Department and the vendor.

- *Performance Dates and Deadlines*

The RFR should identify clearly “any applicable performance dates, deadlines, schedule of delivery dates,” or other time constraints that must be met by the contractor. Without specified dates, custom and trade practice will determine the interpretation of this portion of the RFR and a failure to specify deadlines may result in otherwise avoidable delays.

- *Mandatory versus Desirable Specifications*

Departments must specify the RFR requirements that are “mandatory” (a Bidder must meet or the response may be deemed unresponsive) and those that are “desirable” (not absolutely necessary but preferred). These specifications are not to be confused with the RFR - Required and RFR - Other Specifications. Mandatory specifications should allow for an equivalent alternative so that Bidders may propose an alternative that satisfies the mandatory requirements. Departments may rank Bidders based upon the quality of their responses to mandatory and desired specifications and may award additional points (extra credit) to Bidders that offer more than what is required or desired.

- *Deliverables*

The actual “products” or “results” are commonly known as “deliverables.” Generally, they are products or end results, such as a report, software, photographs, or other items developed for a Department. The Commonwealth is entitled to own and copyright deliverables purchased or commissioned with Commonwealth funds. These items may not be copyrighted by the contractor or used for any other purposes unless the RFR specifies the option to Bidders. Other deliverables are not products but “performance targets” and the contractor is compensated based upon the successful completion of these goals. The Department is not limited to specifying only the expected deliverables, but also may include other ancillary or potential deliverables that are possible or foreseeable within the contract.

- *Prevailing Wage Requirements*

When contracting with certain licensed professionals and trade persons, Departments must require contractors to pay prevailing wage rates, according to M.G.L. c. 149, s. 26. Examples include construction, demolition, carpentry, and other trades. In these instances, Departments must comply with the requirements set forth by the Division of Labor

Standards (DLS). The RFR must require Bidders to submit responses based upon the payment of prevailing wages. The wage rate schedule, which will be supplied to the SSST by DLS, if applicable, must be included in the RFR if it is requesting responses for a specific project/job. If the bid is qualifying contractors for unknown, future work, the applicable wage schedule may be obtained from DLS at the time of engagement for the scope of work. To determine if particular services are covered by this law, to request specific wage rate schedules, or to obtain more information, see the [DLS website](#).

- *Shipping and Delivery Requirements*

The RFR may specify that all items covered in the procurement are exempt from shipping charges and that the Bidder may not include shipping charges on any invoice. In the alternative, if shipping charges will be allowed, then the RFR should specify that awarded contractors must provide a quote for shipping charges and Departments must approve those charges prior to the fulfillment of the order.

- *Bidder Qualifications*

What information do you want to know about a Bidder? The RFR may require Bidders to provide information about their technical capabilities, experience in providing a specific social service, or expertise in serving a particular population. A Department may decide to ask Bidders to provide organizational information relevant to the procurement.

Sample Bidder qualification criteria are included in **Appendix E**.

- *Business References*

A Department may require Bidders to include a list of these organizations (including names, addresses, and telephone numbers). The Department has the right to verify all references and to conduct any other reference or credit checks as the SSST deems appropriate. Written references, including documented performance records of a Bidder on file with the Commonwealth or submitted during the procurement, also may be considered.

- *Invoice and Payment Specifications*

The RFR may outline the procedures and requirements for the submission of invoices, including supporting documentation. The RFR may require completion and acceptance of performance prior to the submission of invoices. RFRs also may require monthly invoices that reflect an established recurring payment, such as for a term lease, maintenance contract, or TELP.

- *Electronic Funds Transfer (EFT)*

Participation in EFT is required for all contractors unless it is unduly burdensome. Departments must require all Bidders to complete and submit the *Authorization for*

Electronic Funds Transfer form. Contractors and Departments alike favor the use of electronic payments which are significantly more cost-effective than payments distributed by check and through the mail. OSD has developed required specification language that Departments must include in their procurements (please see the RFR - Required Specifications via a link at the end of this document).

- *Prompt Payment Discounts*

All contractors/vendors doing business with the Commonwealth must provide a Prompt Payment Discount (PPD) for receiving early payments unless the Contractor/vendor provides compelling proof that providing a prompt pay discount would be unduly burdensome. Departments must require all Bidders to complete and submit a *Prompt Payment Discount* form as part of their response and should use the proposed discounts as an element of evaluation. Expedited payments enable Departments to save money and benefit contractors by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. The Commonwealth's Bill Paying Policy - and General Payment Policies, available on the Comptroller's website, support this practice. The *Prompt Payment Discount* form, available on the OSD Forms webpage must be used as an attachment to the RFR and response. At contract renewal, prompt payment discounts also may be indicated on the *Standard Contract Form*. OSD has developed required specification language that Departments must include in their procurements (please see the RFR - Required Specifications via a link at the end of this document).

Note: PPDs are offered in statewide contracts unless this requirement presents a hardship and is waived by the SSST. When a statewide contract includes PPD terms, all Departments are required to pay their bills as quickly as possible to take advantage of this opportunity to generate savings. OSD has standardized the PPD terms on all statewide contracts, requiring that Bidders submit their discounts based on a 10-day, 15-day, 20-day, and/or 30-day turnaround for payment. By reducing and standardizing the number of days, Departments should find it easier to manage their bill paying process and take advantage of this savings opportunity.

- *Record Keeping Requirements - Security Issues*

The *Commonwealth Terms and Conditions* requires contractors to maintain records including, but not limited to, books, files, and other compilations of data, in such detail as shall properly substantiate claims for payment or as required under a contract. Departments may inspect those records as necessary. These records must be kept by the contractor for a minimum retention period of seven years beginning on the first day after the final payment under a contract or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the contract. The *Commonwealth Terms and Conditions* also require contractors to comply with M.G.L c. 66A for any personal data or public records held or used by the contractor during performance.

An RFR also may:

- Require a contractor to agree to take all reasonable and necessary steps to protect the physical security of any personal data or other Department data or materials used by the contractor.
 - Define physical security to include preventing unauthorized access, dissemination, misuse, reproduction, removal, or damage to personal or Department data while used by the contractor or while in the contractor's possession.
 - Require the contractor to immediately notify the Department both orally and in writing if access to or copies of personal or Department data are requested through a public records law request or a subpoena, or at any time the contractor has reason to believe that any such data has been improperly accessed, disseminated, misused, copied, or removed.
 - Identify requirements for return of data at the conclusion of a contract.
- *Reporting Requirements*

Departments may require that contractors agree to certain reporting requirements (quarterly, semi-annually, etc.), including specific due dates. Departments further may require the types of information to be included on the report, such as purchasers, dates of purchase, quantity, and price. It also may require reports pertaining to the Small Business Purchasing Program, Supplier Diversity Program, and Environmentally Preferable Products, if applicable. Departments may create a form for reporting purposes.

Note: Reporting forms for the Supplier Diversity Program are provided on the OSD Forms webpage.

h. *Instructions for Submission of Responses*

To avoid confusion, the RFR must be clear about the timing and submission of responses. Consider the following when drafting these instructions.

- *Electronic Bid Submission Requirement*

All bids posted on COMMBUYS must require the submission of electronic responses or "quotes" **only**. This requirement applies to both small and large procurements. All Bidders must be registered in COMMBUYS. See: *Instructions for Vendors Responding to Bids Electronically*, provided on the OSD Forms webpage.

- *Documentation Required for Submission*

The RFR must be clear regarding the documents and forms that must be submitted with the Bidder's response and those that may be required after contract award. For example, certain wet-ink signature requirements, e.g., *Standard Contract Form* and Instructions, the *Commonwealth Terms and Conditions*, and the W-9 Form may be deferred until contract

execution. The RFR should instruct Bidders to read and agree to the terms of such forms but not to submit them until after contract award. Similarly, certain SDP documentation is required only after contract award. See Section j. below.

- *Joint Response from Multiple Bidders*

The RFR may specify that two or more Bidders may submit a joint response. A jointly submitted response must designate only one primary contractor. The remaining joint Bidders may be designated as subcontractors or as members of a joint venture, in which two businesses agree to work together to provide the goods/services sought. The primary contractor will be legally responsible for ensuring full performance under a contract.

- i. *Deadline for Responses and Procurement Calendar*

- *Deadline for Submission of Responses*

The deadline for responses must be clear and the Bid Opening Date and time posted on COMMBUYS prevails over the Bid Opening Date and time stated in the RFR. COMMBUYS prevents acceptance of electronic responses submitted beyond the Bid Opening Date and time specified in the bid through its system clock.

Under exceptional circumstances, the SSST may want to consider a late response. With electronic quote submission requirements, these circumstances will be rare; for example, an unscheduled outage of COMMBUYS immediately preceding the bid submission deadline. If a team believes there is an exceptional circumstance that would justify accepting a late bid, OSD approval must first be obtained. The Department head must formally request approval via email (purchasing.agent@state.ma.us) and explain in detail the reason for accepting the late bid. OSD will respond within 24 business hours. Whenever this exception is granted, OSD approval must be placed in the procurement file. Failure to properly prepare and upload documents to COMMBUYS does not relieve the Bidder from meeting the deadline. Departments should ensure that Bidders are educated on COMMBUYS and contact the COMMBUYS Help Desk commbuys@state.ma.us or 1-888-627-8283 well in advance of when the bid is due to ensure bids are submitted successfully before the deadline.

- *Procurement Calendar*

The Department must specify critical procurement dates to ensure fair competition, timely completion, and best value. These dates need to be reasonable, incorporating notice requirements and allowing sufficient time for response and evaluations. The dates may be modified as needed. The OSD RFR template includes a Procurement Calendar table that incorporates key dates for Bidders.

j. RFR Attachments/Required Specifications

This following chart lists the RFR attachments (with required or optional uses). These attachments are on the OSD Forms webpage and may be loaded into a Department's COMMBUYS library by the Department's Organization Administrator for easy access or automatic upload. The chart is followed by descriptions of each attachment.

ATTACHMENT	GUIDANCE FOR USAGE
RFR - Required Specifications	<ul style="list-style-type: none"> Required attachment to the RFR. Departments must attach these specifications in their entirety.
RFR - Required Specifications for Information Technology	<ul style="list-style-type: none"> Required attachment for Information Technology RFRs. Departments must attach these specifications in their entirety.
RFR - Other Specifications	<ul style="list-style-type: none"> Optional attachment to the RFR. Departments may attach selections from these specifications to the RFR. Specifications from this list are optional for Departments and mandatory for Bidders if referenced in the RFR.
<i>Standard Contract Form and Instructions</i>	<ul style="list-style-type: none"> Required attachment to the RFR. As part of the electronic quote process, COMMBUYS requires Bidders to accept all bid attachments as a condition of submission of their response. Consequently, Departments do not need to mandate submission of scanned or wet-ink copies of standard boilerplate contract forms with the response. Executed form is required on award of contract.
Contractor Authorized Signatory Listing	<ul style="list-style-type: none"> Required attachment to the RFR, regardless of value. Executed (signed and verified) form is required on award of contract.
<i>Commonwealth Terms and Conditions</i>	<ul style="list-style-type: none"> Required attachment to the RFR. Executed form is required on award of contract.
<i>For POS Only:</i> <i>Commonwealth Terms and Conditions for Human and Social Services</i>	<ul style="list-style-type: none"> Required attachment to the RFR. Executed form is required on award of contract.

ATTACHMENT	GUIDANCE FOR USAGE
W-9 (Massachusetts Substitute W-9 Form) Request for Taxpayer Identification Number and Certification and DUNS number	<ul style="list-style-type: none"> • Required attachment to the RFR. • Departments must inform Bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
<i>For POS Only: Purchase of Service Attachments:</i> <ul style="list-style-type: none"> • Attachment 1: Program Cover Page • Attachment 2: Performance Measures • Attachment 3: Fiscal Year Program Budget • Attachment 4: Rate Calculation/Maximum Obligation Calculation Page • Attachment 5: Non-Reimbursable Cost Program Offset Schedule • Attachment 6: Capital Budget 	<ul style="list-style-type: none"> • Optional attachments to the RFR. • Departments have the option to require Bidders to complete as part of their response or complete at time of contract execution. • Attachment 1 is required at contract execution. • Attachment 2 may be required at contract execution. • Attachments 3, 4, 5, and 6 may be required at contract execution, depending on specific requirements.
Supplier Diversity Program (SDP) Plan Form 1 (SDP Plan Commitment)	<ul style="list-style-type: none"> • Required attachment to the RFR for large procurements (encouraged for small procurements). • Bidders must complete form as part of response (according to the RFR specifications).
Supplier Diversity Program (SDP) Plan Form 2 (Declaration of SDP Partners)	<ul style="list-style-type: none"> • Required attachment to the RFR for large procurements (encouraged for small procurements). • Attached for informational purposes only. Newly awarded contractors must complete and submit this form within 30 days of contract execution.
Supplier Diversity Program (SDP) Plan Form 3 (SDP Spending Report)	<ul style="list-style-type: none"> • Optional attachment to the RFR, but required for contractor chosen through the award process. • Contractors must complete and submit this form within 45 days of the end of each quarter or otherwise as RFR specifies.

ATTACHMENT	GUIDANCE FOR USAGE
Authorization for Electronic Funds Payment (EFT)	<ul style="list-style-type: none"> • Required attachment to the RFR. • Contractors must participate. • Departments must inform Bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
Prompt Payment Discount Form	<ul style="list-style-type: none"> • Required attachment to the RFR. • Contractors must participate unless exception is authorized. • Departments must require all Bidders to complete a Prompt Payment Discount form.
Additional Environmentally Preferable Product Information	<ul style="list-style-type: none"> • Optional attachment to the RFR. • Departments have the option to require Bidders to complete as part of their response.
Business Reference Form	<ul style="list-style-type: none"> • Optional attachment to the RFR. • Departments have the option to require Bidders to complete as part of their response.

- *Information on RFR Attachments*

- *RFR - Required Specifications*

Certain specifications must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00. These required specifications address items such as COMMBUYS terms, Bidder communication, reasonable accommodation, best value, and the Supplier Diversity Program. Departments must attach these specifications in their entirety (whether or not they pertain to the procurement). Available on the OSD Forms webpage.

- *RFR - Required Specifications for Information Technology*

These specifications are required for all Information Technology procurements. Available on the OSD Forms webpage.

- *RFR - Other Specifications*

OSD has created common but optional specification language that may be used at the Department's discretion if it fits within the scope and approach of their RFR. Note: The term optional, as used in this context, pertains to the Department's option, not the Bidder's option. If a Department chooses to include a specification from this list, the specification then is required for the Bidder, unless otherwise specified.

Standard Contract Form and Instructions: An authorized signatory of the contractor and the Department must execute a *Standard Contract Form* for procurements under 801 CMR 21.00.

The contract incorporates, by reference, the applicable *Commonwealth Terms and Conditions* and includes the RFR, the Bidder's response (excluding any clauses or sections that are stricken by the Department as unacceptable), and any additional negotiated language as authorized under 801 CMR 21.07(1). The Department must maintain the contract as part of the procurement file. The execution and filing of a contract by the Department should not be construed as approval of any conflicting language that may have been inserted herein or attached thereto. The Department and the contractor may not modify the language contained in the *Standard Contract Form*. Further, any contract attachment that contains conflicting language shall be superseded by the language of the *Commonwealth Terms and Conditions*.

Since the *Standard Contract Form* is available to Departments and Bidders electronically, it is important to state that any changes or electronic alterations by either the Department or the contractor to the official version of this form, as jointly published by the Executive Office for Administration and Finance (ANF), the Operational Services Division (OSD), and the Office of the Comptroller (CTR), shall be void. The Office of the Attorney General has recommended that Departments not sign additional contracts, invoices, or other documents containing contractual terms. These forms may contain language that conflicts with the *Commonwealth Terms and Conditions*, the *Standard Contract Form*, or other state law or policy. Further, Bidder contract forms often contain clauses on choice of law for another state, limits to liability, indemnification of the contractors, penalties, and other provisions that are adverse to the Department's interests. Departments that choose to sign these types of documents do so at their own risk and will be responsible for any associated costs and damages.

Note: There is a provision in the *Commonwealth Terms and Conditions* and the *Standard Contract Form* that states that the language in these forms shall supersede any conflicting language attached, including a Bidder's contract form, purchase order, or invoice form.

- *Contractor Authorized Signatory Listing*

A *Contractor Authorized Signatory Listing (CASL)* is required for any contract, regardless of value, executed by the Department. This form contains a list of authorized signatories. The Department is responsible for verifying the authority of any contract signatory to sign as well as the authenticity of the signature on a contract (the signature was actually made by the authorized signatory and not a designee). This form or its equivalent may be obtained once per contractor and may be copied and attached to each contract executed by the Department. Instructions are included on the *Contractor Authorized Signatory Listing*, which is available on the OSD Forms webpage.

Note: The submission of this form is deferred until after contract award.

○ *Commonwealth Terms and Conditions*

Please note there are two versions of the *Commonwealth Terms and Conditions*. All Commonwealth contracts for commodities and services, with the exception of contracts for human and social services, execute the *Commonwealth Terms and Conditions*. For human and social service contracts, the *Commonwealth Terms and Conditions* for Human and Social Services must be executed for transactions using object codes “M03” and “MM3.” Contractors who hold contracts with the Commonwealth for both human and social services and commodities and non-human and social services must execute both versions of the document. Unless otherwise stated, references in the policies to the *Commonwealth Terms and Conditions* apply to both versions of the document.

An authorized signatory of a Bidder must execute a *Commonwealth Terms and Conditions* for small and large procurements under 801 CMR 21.00. Execution refers to the “distinct, verifiable signature or symbol of an authorized signatory of a contractor or a Department which, when affixed to a document, is legally binding.” The current practice for execution requires an original signature and date (by an authorized signatory).

The *Commonwealth Terms and Conditions* is executed once by a Bidder and filed with the CTR. It is incorporated by reference into any contract for commodities or services executed by the Bidder and any Department of the state. In addition, for a Bidder to be awarded a contract, a *Request for Taxpayer Identification Number and Certification (Massachusetts Substitute W-9 Form)* that contains the contractor’s correct Taxpayer Identification Number (TIN), name and legal address information, and DUNS number also must be on file with the CTR for the contractor. If the contractor has not previously filed this form with the CTR or if the information has changed, a new W-9 Form must be completed and returned to the CTR. See the W-9 Form description below. To approve the filing of these forms on the MMARS VCUST table, a completed and properly executed *Commonwealth Terms and Conditions* and W-9 Form are to be submitted to the CTR.

The Department and the contractor may not negotiate the terms of the *Commonwealth Terms and Conditions*. Any contract attachment that contains conflicting language shall be superseded by the language of the *Commonwealth Terms and Conditions*. Please note, however, that pursuant to 801 CMR 21.00, ANF, OSD, and CTR have issued language that interprets Section 11, Indemnification, as it applies to Information Technology procurements within certain expenditure classification object codes. Please see *RFR - Required Specifications for Information Technology* via a link at the end of this document for the text of this interpretation and the affected object codes. Since the *Commonwealth Terms and Conditions* is available to Departments and Bidders electronically, it is important to state that any changes or electronic alterations to the official version of this form as jointly published by ANF, OSD, and CTR, by either the Department or the contractor shall be void.

- *W-9 Form (Massachusetts Substitute W-9 Format)*
A Request for Taxpayer Identification Number and Certification (Massachusetts Substitute W-9 Form) **must** be distributed with every RFR. The W-9 Form contains the Bidder's correct TIN, name and legal address information, and DUNS number and must be on file with the CTR for any contractor receiving payments through MMARS. Bidders must fill out a W-9 Form and return it with the executed *Commonwealth Terms and Conditions* and the Bidder's response if it has not previously filed this form with CTR or if the information contained on a previously filed form has changed.
- *For POS Only: Purchase of Service Attachments*
Six contract attachments have been developed specifically to document programmatic and fiscal specifications for human and social service procurements. Instructions for completion and a detailed explanation of the content of each attachment may be found in the associated guidance entitled *Purchase of Service Attachment Instructions for Human and Social Services* available via a link at the end of this document.
- *Authorization for Electronic Funds Transfer*
This online form is required for Bidders (unless it would create an undue burden). See CTR payment rules for more details on EFT at the [Comptroller's Payments and Payee website](#).
- *Supplier Diversity Program (SDP) Plan Forms*
The submission of an SDP Plan is a requirement for large procurements, including statewide contracts. It also is strongly encouraged for small procurements. All large procurements over \$150,000 must include language that requires the submission of a completed *Supplier Diversity Program (SDP) Plan*. SDP Plan Form 1 (SDP Plan Commitment) must be submitted as part of the Bidder's response.
- *Prompt Payment Discount Form*
This form, with standardized prompt payment discount terms, requiring that Bidders submit their discounts based on a 10-day, 15-day, 20-day, and/or 30-day turnaround for payment, is a required attachment to the RFR. Expedited payments may enable Departments to save money.
- *Additional Environmentally Preferable Product Information*
In line with the Commonwealth's efforts to promote products and practices that reduce environmental impacts, Departments are encouraged to use this attachment to solicit information from Bidders regarding their use of environmentally preferable packaging, business practices, training, and independent environmental certifications. Bidders who demonstrate significant environmental efforts in any of the categories on this attachment may be eligible to receive extra points in the evaluation of the RFR.

Business Reference Form: A Department may require Bidders to provide business references. The references should be entities for which the Bidder has provided

commodities or performed similar services, or which otherwise demonstrate the Bidder's capability to meet contract performance.

- *RFR Pre-Release*

Once the RFR is drafted, Departments should ensure that all elements of the SSST strategy are in place and the elements of the strategy are reflected in the RFR document in a clear, well-organized, and comprehensive manner. Involving all members of the SSST, including contract, fiscal, programmatic, and legal will help identify any omissions or areas of potential confusion to Bidders that could impact the procurement process.

k. Procurement Requirements by Dollar Value Categories

In the Commonwealth, different rules apply to procurements of different dollar values. The table below indicates required actions at each step of the procurement process for each dollar value category.

Procurement Requirements by Phase and Value Threshold

Procurement Phase	Incidental Purchase (Up to \$10,000)	Small Procurement (up to \$150,000)	Large Procurement (\$150,000 or more)
Distribution	COMMBUYS posting or obtaining three quotes is recommended best practice.	Exclusively distributed via posting on COMMBUYS	Exclusively distributed via posting on COMMBUYS
Notification	OSD encourages use of SDO-certified and Small Business Purchasing Program (SBPP) participants for incidental purchases.	While notification is made to all businesses that subscribe to a specific COMMBUYS commodity code(s), the Department's RFR must state intent to award a contract to a Small Business Purchasing Program (SBPP) eligible Bidder.	Departments are required to select the appropriate commodity code in COMMBUYS, and select all vendors for notification.
Supplier Diversity Program Plan	Encouraged	Encouraged	Required
Written Response	Not Required	Online via COMMBUYS. Sealed Responses collected via Formal Bids in COMMBUYS resulting in Open Enrollment contracts. Unsealed Responses collected via Informal Bids in COMMBUYS resulting in Rolling Enrollment contracts.	Online via COMMBUYS. Sealed Responses collected via Formal Bids in COMMBUYS resulting in Open Enrollment contracts. Unsealed Responses collected via Informal Bids in COMMBUYS resulting in Rolling Enrollment contracts.

Procurement Phase	Incidental Purchase (Up to \$10,000)	Small Procurement (up to \$150,000)	Large Procurement (\$150,000 or more)
Evaluation	If multiple quotes are received, then evaluate all quotes using best value criteria. As noted above, awards to SDO-certified and SBPP participants are encouraged.	Evaluate all submissions using best value criteria. However, if no SBPP Bidder bids or there are none that meet the Department's best value criteria, then may award to non-SBPP Bidder.	Evaluate all submissions using best value criteria.
Resources	See the Incidental Purchases section of this document.	See the SBPP Policy requirements below and also see the Small Business Purchasing Program webpage .	See next section for further detail.

- *The Small Business Purchasing Program (SBPP) and Small Procurements*

When creating a new bid in COMMBUYS that is eligible for the Small Business Purchasing Program, Departments must identify the bid as SBPP-eligible. Executive Departments must award contracts for Small Procurements (all procurements of goods and services with a total value of less than or equal to \$150,000) to verified COMMBUYS-registered small business Bidders participating in the Small Business Purchasing Program (SBPP) (1) if a response is received from such an eligible small business and (2) if their response meets the Department's established best value criteria. While all quotes received in response to these Small Procurements may be evaluated, Departments must award a contract to a verified COMMBUYS-registered small business Bidder that meets the Department's best value criteria. In the event that no verified COMMBUYS-registered small business meets the best value criteria, the award may be made to the vendor who has submitted the highest scoring proposal to the Department that meets or exceeds the best value criteria.

The SBPP does not apply to procurements with a total value of less than \$10,000 that are for one-time, non-recurring expenses (referred to as "Incidental Purchases") or to other procurement exceptions identified in the Procurement Exceptions policy. For additional information and requirements about this program, please consult [OSD's Small Business Purchasing Program webpage](#).

F. Issuing Bids in COMMBUYS

Consistent with OSD's requirements for full competition and transparency, unless otherwise authorized, COMMBUYS must be utilized for transacting all procurement and purchasing-related activities.

i. Post All Bids and Procurement Notices on COMMBUYS

All solicitations (RFRs, Requests for Quotes [RFQs]) for small and large procurements, referred to in the system as bids, must be posted on COMMBUYS. In addition, Requests for Information (RFIs), WTO notices, and Due Diligence Postings must be posted on COMMBUYS. The only exception to this public posting requirement is when a solicitation contains information that is not subject to public disclosure, for example, security sensitive information. If a bid is not posted in COMMBUYS, the procurement still must be documented on COMMBUYS, with security sensitive information excluded.

Bids also may be advertised in other commercial publications or on the Department's website. However, these additional advertisements should refer Bidders to COMMBUYS to obtain the RFR electronically.

a. Identifying Bids in COMMBUYS

COMMBUYS generates and maintains a sequential numbering system for all documents. Departments may use their own titles and numbering systems for Bids and MBPOs by placing this information in the Short Description field.

- *Open versus Closed Bids*

COMMBUYS allows for two types of bids – Open or Closed.

Open Bids allow any vendor registered in COMMBUYS to submit a response. Open Bids are viewable by anyone who accesses the system without logging in. OSD requires that bids be open and competitive. Therefore, unless a justification to use a closed bid exists, all bids must be posted as Open.

Closed Bids are visible **only** to the vendors notified of the bid by the Department upon publication. Only the notified vendors are able to submit a quote in response to a closed bid.

A closed bid option is appropriate only in limited circumstances when a public bid is not required. For example, this option is appropriate for issuing bids (Requests for Quotes) against existing Contracts where the pool of eligible vendors has been established.

- *Formal versus Informal Bids*

COMMBUYS allows users to designate a bid as either formal or informal.

Formal Bids do not allow purchasers to view responses until the Opening Date/Time (i.e. Bid Submission Deadline) identified in the bid. **Bids are formal by default and no action is required to make them formal.** This option should be used for all bids unless they fall into one of the situations listed below as appropriate for Informal Bids.

Informal Bids allow purchasers to view responses prior to the Opening Date/Time. Informal bids allow for quotes to be evaluated upon receipt and may be used only in limited circumstances for issuing bids (Requests for Quotes) against existing Contracts and Open/Rolling Enrollment solicitations.

- *Selecting Bid-Specific Commodity Codes*

COMMBUYS uses a system of commodity codes based on the [United Nations Standard Products and Services Code® \(UNSPSC®\)](#), a standard for classification of products and services. The UNSPSC classifies products and services into general segments and then, with an increasing degree of specificity, into families, classes, and commodities. Each of these four hierarchical levels is associated with two digits within the commodity code. Please refer to the COMMBUYS resource center for guidance in selecting UNSPSC codes, including Environmentally Preferable Products (EPP) identifiers.

COMMBUYS does not generate automatic notifications of bids to vendors matching their business interests. For open bids, Departments must notify **all** vendors who are registered in COMMBUYS with commodity codes matching the UNSPSCs used in the Bid. For the associated job aid regarding UNSPSCs, please see the [COMMBUYS Resource Center](#).

All bids and postings (including RFRs, RFQs, RFIs, WTO, Due Diligence, and other notices) in COMMBUYS must be associated with at least one UNSPSC containing at least six digits. The only exception is where the application of this rule will result in inaccurate information (e.g., product or service groups for which a specific code is not available). Where no specific code applies, the applicable general category should be used.

ii. All Bids Must Require Electronic Response Only

All responses to solicitations and bids (RFRs, RFQs, and Due Diligence postings) must be submitted electronically through COMMBUYS. The only authorized exceptions to this requirement are (1) when a response includes submission of information that is security sensitive or (2) when samples or other materials that cannot be electronically transmitted are required. When samples or other materials are required, the remainder of the bid documents must be submitted through COMMBUYS.

In COMMBUYS, acceptance of electronic quotes is enabled by checking off the “Allow Electronic Quote” checkbox in the bid header. In addition, Departments must include the Electronic Quote Submission Instructions, which may be found on the OSD Forms webpage, in all bid documents.

iii. Bidders Conferences

The RFR may include dates for in-person or web-based Bidders’ conferences. Conferences may be helpful to present or distribute additional information that is not easily transferable or distributed by bid. A conference also may provide some indication to Departments of the level of interest in the

procurement. Bidders may use a Bidders' conference to identify their competition or establish contacts for partnering or subcontracting.

Departments are required to keep a record of attendees at a Bidders' conference through a sign-in sheet upon entry. Departments should record the minutes of a Bidders' conference, including the questions asked and answers provided. Retain the original sign-in sheet in the paper procurement file.

iv. No Late Bid Submissions

Bid submission deadlines may be extended in advance of the bid closing date and time. Extensions must be granted to all Bidders.

As a general rule, no late bids may be accepted.

Under exceptional circumstances, the SSST may want to consider a late response. With electronic quote submission requirements, these circumstances will be rare; for example, an unscheduled outage of COMMBUYS immediately preceding the bid submission deadline. If a team believes there is an exceptional circumstance that would justify accepting a late bid, OSD approval must first be obtained. The Department head must formally request approval via email (purchasing.agent@state.ma.us) and explain in detail the reason for accepting the late bid. OSD will respond within 24 business hours. Whenever this exception is granted, OSD approval must be placed in the procurement file.

v. Bid Cancellation

Pursuant to 801 CMR 21.06(7), the SSST may at any time prior to the execution of a contract for any reason and without penalty notify Bidders of a cancellation of a procurement and the rejection of all responses.

The reason for the cancellation does not have to be publicly stated but should be documented by the SSST and retained in the procurement file. Best practice in cancelling a bid on COMMBUYS would be to post a notice to the open bid notifying all Bidders of the cancellation and it should remain for 30 days. Cancellation occurs when funding has been eliminated, circumstances requiring the procurement have significantly changed, or the goods or services no longer are needed. Other reasons include concern about collusion, price fixing, or other unfair trade or anti-trust violations, or if all the responses are priced too high for the Department's funding.

G. Bid Opening

At the conclusion of the bid submission period (or in the case of informal bids, upon receipt), the SSST may open the bids and distribute to team members for evaluation.

i. Evaluating Bid Responses

Bid evaluation is a critical aspect of the RFR process. Departments should review all responses to determine whether minimum submission requirements have been met. Only responses meeting the minimum requirements (mandatories) should be evaluated. Departments have great flexibility to develop evaluation procedures that are most appropriate to the RFR being issued, taking into consideration the size and complexity of the procurement and other factors that may influence whether a Department conducts an abbreviated or more comprehensive evaluation process.

Internal evaluation procedures should include the following:

- The process to be used for determining compliance with minimum submission requirements.
- The process to be used in scoring and evaluating responses.
- The composition of the evaluation committee (single or multiple reviewers) based on the total dollar value, complexity, and type of commodities or services, among other things. Consider the roles, responsibilities and the training of the evaluators.
- The SSSL's process for ensuring that the individual(s) participating in the evaluation process are free from conflict of interest and have no financial or personal interest, which is documented by having signed and dated "*Strategic Sourcing/Procurement Management Team (PMT) Membership Terms*" form in the procurement file.
- Requirements for the documentation of the evaluation process, including scoring sheets, list of reviewers, written comments, or written reports summarizing the evaluation process, rankings of responses, and selection recommendations.

All responses received by the deadline should be evaluated by the SSST. A sequence for review may be:

- Determine if the responses conform to the threshold requirements of the RFR or if any of them require disqualification.
- Consider any requests for corrections of responses.
- Conduct oral presentations, interviews, or demonstrations, if applicable.
- Evaluate responses pursuant to the evaluation criteria.
- Confirm and verify references and conduct additional reference or performance checks, as necessary.
- Consider whether the SSST will enter into competitive negotiations, single vendor negotiations, or if Bidders should be afforded a Best and Final Offer (BAFO) option.

Considerations that are not included in the RFR may not be used in the selection or ranking of a Bidder. For example, if Bidders will receive additional credit or will be ranked higher for having certain national accreditations, this criterion should be included in the RFR so that Bidders know they have the opportunity to identify this information and improve bid scores. Conversely, if this

information was not requested in the RFR, Bidders who do not offer these options may not be penalized.

THE SSST should use caution when basing consideration of prior performance strictly on government or previous contracts with another state Department and should use this criterion only when necessary. Similar experience is a fairer basis for selection and gives qualified Bidders an equal chance to compete for the Commonwealth's business.

Similar caution should be exercised in procurements if one of the Bidders currently is under contract for the same commodities or services. Familiarity with Department operations and the lack of time needed for startup should be one set of considerations and should not be used to effectively exclude new qualified Bidders from competing for the contract.

ii. Oral Presentations and Demonstrations

Oral presentations are optional and provide an opportunity for Bidders to highlight the strengths and unique aspects of their responses and provide answers to questions regarding their responses. Departments should indicate its intent to conduct such presentations in the RFR and these presentations may be limited to top-ranked Bidders. Generally, oral presentations are scheduled after Departments have determined which responses have met the minimum submission requirements.

Oral presentations must be conducted in a fair manner with consistency in time allotments and format. However, the location and dates and times for presentations are at the Department's discretion. These presentations are not opportunities to submit new information or modify a response; rather, the purpose is to clarify issues that would enable Departments to better understand or demonstrate how proposed solutions function and evaluate responses. Such presentations are particularly helpful when the RFR is for complex services or involves information technology solutions.

The SSST Leader may waive or alter requirements of an oral presentation upon the written request of a Bidder due to special hardships, such as a Bidder who has disabilities or limited resources. These oral presentations may occur through an alternative written or electronic medium, i.e., telephone, video conference, TTY, or the Internet.

A Bidder's failure to agree to an oral presentation may result in disqualification from further consideration. Oral presentations may be recorded manually or electronically (with notice to the presenting Bidders).

iii. References

Pursuant to 801 CMR 21.06(9), the SSST may verify any references included in a Bidder's response and conduct any other reference or credit checks it deems appropriate. Further, it may consider any documented references, including documented performance records of a Bidder on file at the procuring Department or solicited from other Departments or entities. The SSST may conduct reference checks in a manner that it deems most appropriate and efficient. However, all such

reference checks must be documented. Departments should use the same script or format of questions when conducting reference checks so that the results are consistent and fair to all Bidders. A *Sample Reference Review Form* is available on the OSD Forms webpage and may be modified as needed. The team also may decide to accept unsolicited references. Reference checks may be made at any time during the procurement or contract.

iv. Disqualification

Pursuant to 801 CMR 21.06(10) a SSSST may disqualify responses for reasons including, but not limited to, the following:

- Bid response received after the deadline for submission.
- Failure to meet, address, or comply with the material requirements of the RFR, including instructions for submission, content or format.
- Indicates collusion or unfair trade practices by one or more Bidders agreeing to act in a manner intended to avoid or frustrate any of the provisions of 801 CMR 21.00 or any other general or special law or regulation.
- Submission by a Bidder or identifying a subcontractor who currently is debarred. If the subcontractor is replaceable without a material effect on the Bidder's response, the Bidder may be given the opportunity to select another subcontractor.

Additionally, pursuant to 801 CMR 21.07(2)(d), the SSST may disqualify a selected Bidder's response if the Bidder:

1. Intentionally delays the timely execution of the applicable *Commonwealth Terms and Conditions* or the *Standard Contract Form* or is unable to execute timely even for reasonable delays.
2. Conditions execution of the applicable *Commonwealth Terms and Conditions* or the *Standard Contract Form* upon acceptance of additional materials or amended contract terms and conditions, or specifies that the Bidder's response is "non-negotiable," "all-or-nothing" or that there may be "no substitutions."
3. Negotiates in bad faith.
4. Refuses to execute a *Commonwealth Terms and Conditions* or the *Standard Contract Form*.
5. Demands that the Department execute the Bidder's contract form instead of or in addition to the applicable *Commonwealth Terms and Conditions* or the *Standard Contract Form*.
6. Is unable to reach final agreement on contractual terms with the Department within a reasonable time as determined by the Department.

Note: The SSST makes the final determination of whether a response is deemed unresponsive and is disqualified. With the exception of accepting late responses, the SSST shall have discretion to determine whether a response should be deemed unresponsive and disqualified. Departments should maintain documentation pertaining to any disqualification of responses in the procurement file.

v. Corrections and Clarifications

Pursuant to 801 CMR 21.06(8) a procuring Department has full discretion to determine whether to allow a response correction or clarification.

A correction is defined as a minor informality or obvious error in a response submission. A correction may include matters of form rather than substance, including clerical, transposition, or mathematical errors or insignificant mistakes that, in the opinion of the SSST, may be corrected without prejudice to other Bidders or without changing the substantive elements of the Bidder's submission. Provided that all Bidders are accorded fair and equal treatment, the SSST may review submissions from any Bidder to correct a minor mistake in their response. Mistakes in responses may be corrected either at the SSST or the Bidder's request; however, acceptance of Bidder corrections is subject to SSST approval. Departments must be careful that a Bidder is not correcting a response that would result in an unfair advantage or result in a lower cost in order to win the award.

A clarification is defined as an explanation of what is stated in a response. A clarification may not be used as an opportunity for a Bidder to submit supplemental information or to change a response unless a Department specifically requests these submissions or changes as part of a clarification process made available to all Bidders that submitted responses.

If clarification of a particular section of a response is requested from one Bidder, the SSST must provide the same opportunity for clarification to all Bidders, if appropriate. Requests for clarification to Bidders must be in writing in a manner that is fair and consistent. Clarifying information obtained as part of oral presentations is optional for Departments and always should be provided in writing. A Department is not required to go through the extra work to clarify the RFR if only one Bidder misunderstood the RFR or if the ambiguity was not a material element of the procurement.

The need for clarification also may arise when a review of responses reveals that a section of the RFR was unclear and that several Bidders misunderstood what was intended. Ambiguities usually are identified during the RFR inquiry period (Bidders' Q&A on COMMBUYS), but if the ambiguity was not identified prior to the bid submission deadline, the SSST may choose to provide an opportunity to clarify the section to all Bidders who submitted responses and all Bidders should be given the opportunity and sufficient time to revise their responses on that section of the RFR.

If the SSST determines that the amount of clarification required is significant or has concerns that the clarifications would result in a substantially different RFR from the original, it may decide to cancel and re-issue the procurement to resolve any ambiguity or confusion.

No correction or clarification of response prices, terms and conditions, or the submission of supplemental information prejudicial to the interests of other Bidders or to fair competition shall be permitted. Departments and SSSTs must be careful to protect the integrity of the competitive procurement process by treating all Bidders fairly and equally during the procurement process.

vi. Conducting Contract Negotiations

During the evaluation phase, Departments may offer some or all Bidders multiple opportunities to improve their bids, for example, by lowering prices to receive a more favorable evaluation. The use of reverse auctions may serve as a tool for these rounds of negotiations. Multiple rounds of negotiations occur as part of the evaluation process (before Bidder selection) and occur prior to contract negotiations with selected Bidders.

a. Best and Final Offers

Pursuant to 801 CMR 21.06(11), the SSST may provide Bidders with an opportunity to provide a Best and Final Offer (BAFO). This is an optional tool in the Bidder selection process and is not considered part of the final contract negotiation process.

Bidders may be asked to reduce costs or provide additional clarification to specific sections of the RFR. BAFOs may be useful when no single response addresses all the specifications, when the costs submitted by all Bidders are too high, when SDP Plans are inadequate, when two or more Bidders are very close or when all Bidders submitted responses that are unclear or deficient in one or more areas.

The SSST may issue BAFO requests to any or all Bidders. In either case, the SSST should provide the same information and the same submission requirements to all Bidders chosen to submit a BAFO. The written terms for a BAFO must include specific information on what is being requested, submission requirements with timelines and information on the basis for evaluating responses and determining the successful Bidder(s). Departments may evaluate the submissions of BAFOs as an addition to the scores already received by Bidders on their original RFR responses or may develop a new evaluation process based entirely on the BAFO submission.

Selected Bidders are not required to submit a BAFO and may respond in writing notifying the SSST that their response remains as originally submitted. During the BAFO process, it is permissible to disclose the lowest price submitted during the initial responses but not to disclose the identity of the Bidder. Further, it is not permissible to disclose the current rank of any of the Bidders. The SSST will have full discretion to accept or reject any information submitted in a BAFO.

vii. Selection of Apparent Successful Bidder(s)

The SSST members shall rank the Bidders based upon the evaluation criteria and the optional tools of reference checks, oral presentations, negotiations, and BAFOs. The SSST is not required to automatically select a Bidder based upon the lowest cost or the highest qualifications unless these were the primary criteria for selection. When multiple Bidders are to be selected, the pool of qualified Bidders are ranked based upon the evaluation criteria. If the SSST uses score sheets, care should be taken to verify calculations and score tabulations to ensure accuracy. The scoring procedures should provide the same opportunity and fairness for all responses. Score sheets must become part of the

procurement file. Members of the team may complete individual score sheets (as working documents) used to generate the final “score sheet of record,” to be placed in the file. These working documents are considered to be personal notes (not the “score sheet of record”) of each team member.

The selection must be fair and impartial and based upon the Department’s documented decision of which Bidder best meets its conception of best value as defined by the procurement. Final approval of a selection resides with the Department head and Chief Fiscal Officer, unless the SSL is authorized to make the final approval.

a. Confirm Apparent Successful Bidder is Not Debarred

Federal or state debarment may occur when a contractor’s activities or performance has been egregious. No Department shall knowingly accept a response or award a contract to any contractor or approve a subcontract to any party that currently is subject to any federal or state debarment order or determination, including, but not limited to, M.G.L. c. 29, s. 29F, which mandates that any contractor debarred or suspended cannot participate in contracts. Contracting with federally debarred companies could result in a reduction or termination of federal funds to a Department that provides federally funded programs.

Information about debarred businesses is available on the [Debarment List](#). Contractors executing the *Standard Contract Form* also certify that they and their subcontractors are not debarred under federal or state law. In the event a Department seeks to debar a contractor for severe circumstances, it must contact the Secretary for Administration and Finance who has the authority to debar vendors in accordance with M.G.L. c. 29, s. 29F. For additional information, please consult the OSD website.

b. Conduct Contract Negotiations

Once a Bidder(s) is selected for final contract negotiation, the Department may assign one or more staff to conduct negotiations prior to the decision to formally execute a contract. The identification of a selected Bidder(s) does not create a contractual obligation on the Department or the Commonwealth until negotiations have been successfully concluded and a contract has been executed by both parties. Departments are encouraged to include program staff, including legal, during contract negotiations.

Note that, pursuant to M.G.L. c. 106, s. 2-205, Bidders’ responses/bids made in response to a Request for Response remain in effect for 90 days from the date of submission. If contract negotiations cause this 90-day effective bid period to lapse, the SSST should ask the Bidder to renew their bid proposal in writing.

c. What Is Negotiable?

Pursuant to 801 CMR 21.07(1), the SSST may negotiate with selected Bidder(s) prior to execution of a contract based on what was specified in the RFR. The better value standard

described in 801 CMR 21.07(1)(c) allows the Department and a selected Bidder, or a contractor, to negotiate a change in any element of contract performance or cost identified in the RFR or the Bidder's response which results in lower costs or a more cost-effective or better value commodity or service than was presented in the Bidder's original selected response. Provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Bidder in the original selected response, it is negotiable.

- *Supplier Diversity Plan (SDP) Negotiations*

Prior to signing a contract, agencies may negotiate the SDP Plan for spending with SDO certified M/W/SDVOBEs for the duration of the contract, but only to increase what was committed to in the original response. Please see the Supplier Diversity Plan guidance for more information pertaining to SDP plan negotiations. Negotiated changes must be included in the procurement file.

- *Additional Negotiated Items Agreed to by Both Parties*

Pursuant to 801 CMR 21.07(1)(b), the SSST and a selected Bidder, or a contractor, may negotiate additional language that clarifies their understanding of, but does not change, the language of the contract or contract performance identified in the original RFR and a Bidder's response. These clarifications may provide a more detailed description of the language in an RFR and the response. The clarifications also may provide additional terms and the meaning of terms in the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form*. Clarifications may fill in the gaps and "spell-out" the understanding of the Department and the contractor regarding their respective contract responsibilities. Clarifications may not be used to have the effect of negating, modifying, or replacing language in the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form*.

- *What Is Not Negotiable?*

A Department **may not** negotiate the terms or a change to the *Standard Contract Form* or the applicable *Commonwealth Terms and Conditions*. Acceptance of any other Bidder-submitted standard form or contract should not be construed as a Department's approval of any conflicting language that may be on these documents.

The Office of the Attorney General has recommended that Departments not sign additional Bidder-submitted contracts, invoices, or other documents containing contractual terms. Departments that choose to sign these types of documents do so at their own risk and are responsible for any associated costs, legal representation, or damages.

In certain circumstances, however, the SSST may wish to consult with the OSD Legal Bureau or with MassIT Legal regarding software license agreements. In addition, Departments may

not negotiate for any new commodities or services that are outside the scope of the original RFR.

Since the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form* are available electronically, it is important to note that any changes or electronic alterations by either the Department or the contractor to the official version of these forms, as jointly published by ANF, OSD, and CTR, shall be void. Furthermore, Departments are advised to include language in their RFR informing Bidders that, by submitting a response they are agreeing to execute these and other Commonwealth standard forms as is and may not raise exceptions or make changes to these forms if awarded a contract.

- *Unsuccessful Negotiations:*

If the Department is unable to negotiate the programmatic, fiscal, or administrative terms of the contract with the initially selected Bidder(s) in a reasonable period of time, then the Department may disqualify that Bidder and begin negotiations with the next qualified Bidder. A Department also may choose to cancel the procurement and either begin again or pursue any other option permitted under the regulation.

Please also refer to the Disqualification section.

d. *Conduct Debriefings as Appropriate*

Pursuant to 801 CMR 21.06(14), an RFR may contain provisions for a non-successful Bidder to request a debriefing. A debriefing is offered as a courtesy to Bidders, rather than a requirement, and allows the Bidder the opportunity to ask questions regarding the evaluation of its response. Debriefings are designed to identify any weak areas of a response and suggest improvements for future procurements. Comparisons with other Bidders' responses are not appropriate during debriefings. If an RFR does not contain the opportunity for a debriefing, a SSSL (for non-POS bids) may grant or deny a request and is under no obligation to provide a debriefing.

- *Purpose of a Procurement Debriefing*

Debriefings are meant to:

- Provide an open, appropriate, and meaningful information exchange about the procurement and evaluation processes;
- Show that the SSST followed the rules and conducted the acquisition in an objective and fair manner;
- Invite feedback from the unsuccessful Bidder of their views of the acquisition process for that particular procurement;
- Help the Bidder to understand the results of the process as it applies to their proposal (only) and to get closure;
- Educate the Bidder to better understand their evaluation results;

- Explain the weakness of their proposal based on the scoring, but not in relationship to any other specific proposals;
 - Point out the strengths of the Bidder's proposal and acknowledge where the proposal scored well;
 - Provide feedback and advice on how the Bidder may improve his/her scoring in future proposal submissions; and
 - Confirm at the end of the session that the Bidder's questions regarding the evaluation of his/her response were answered.
- *Recommended Best Practices*

The following steps identify recommended practices to conduct an effective debriefing:

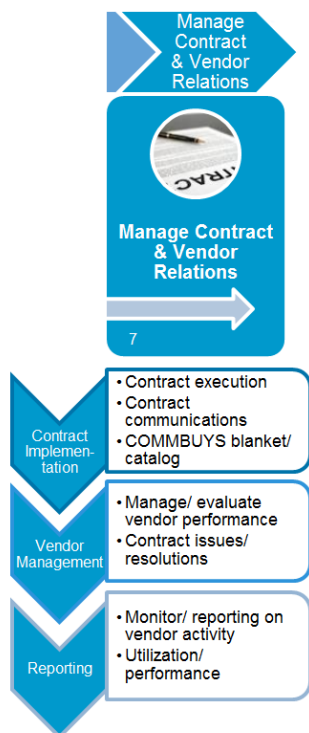
- Bidder must submit a list of questions in advance of any debriefing;
- It should be explained to the Bidder that questions may be about the Bidder only, the RFR, the Bidder's response, and the evaluation and that the SSST will confine its answers only to these questions in the debriefing and will not compare the Bidder to other Bidders;
- After the questions are submitted, the SSST should meet to discuss and prepare responses to the questions; the debriefing then is scheduled at the convenience of the SSST;
- The Bidder should be notified that questions which do not fit within the scope of the debriefing will not be answered;
- The debriefing meeting should start on time and last for only one hour (or some other time limit as determined by the SSST);
- The Bidder should be asked to provide an advance list of the attendees, the company the attendees represent, titles, and functional roles; if the Bidder is bringing an attorney, then a Legal representative from the Department should attend (Departments should not conduct debriefings with Bidder attorneys without consulting their own legal Department);
- Plan the agenda, provide the agenda in advance, and include introductions, a general review of the RFR/evaluation process by the SSST, and a review of the questions provided in advance;
- The SSST should answer only those questions submitted in writing beforehand; and
- The meeting should end on time.

H. Manage Contract and Vendor Relations

The last phase of the seven-part Strategic Sourcing process involves the contract implementation, vendor management, and reporting functions relating to successful procurements.

Essential Elements

- Creating MBPOs and catalogs in COMMBUYS.
- Maintaining and updating catalogs.
- Tracking Key Performance Indicators.
- Vendor Performance Monitoring.
- Customer Satisfaction.
- Making determinations on renewals.



i. Notifying Respondents of Apparent Successful Bidder

Pursuant to 801 CMR 21.06(12), notice must be provided to Bidders concerning the outcome of the procurement subsequent to contract(s) execution with successful Bidder(s). Notification must be provided to all Bidders through COMMBUYS.

If the SSST uses the optional Bid Tabulation tool in COMMBUYS, once the results of the Bid Tabulation have been approved, COMMBUYS automatically notifies Apparent Successful Bidders of awards and sends notifications to vendors who expressed interest in a bid.

ii. Create MBPO in COMMBUYS

In COMMBUYS, a Contract is referred to as a Master Blanket Purchase Order (MBPO). MBPOs include statewide contracts and Department contracts.

Departments are required to use MBPOs to document contracts and, as discussed below, create catalogs for purchasing against which purchase orders ultimately will be issued.

The MBPO must, at a minimum, contain the following information:

- **Short Description**, including the contract name and Department-designated number, if applicable;
- **General Information**, such as: including Solicitation Enabled (Yes or No) for multi-vendor contracts, and Release Type;
- **Contract type**, selecting a Type Code: Statewide or Non-Statewide/Limited User;
- **Contract Instructions**, including the purchaser's contact information (as applicable);
- **Attachments**, including the Request for Response or other appropriate bid documents;
- **Master Blanket/Contract Controls**: identify the MBPO Begin Date and End Date, showing the current duration of the contract and the organizations eligible to use the MBPO;
- **Items available** in the MBPO Catalog; and
- **Awarded vendor information**.

iii. Create and Maintain MBPO-Specific Catalogs

Because purchasing activity, primarily purchase orders, will be issued against the MBPO, all MBPOs must include a catalog of at least one orderable item. COMMBUYS allows two types of catalogs: (1) Line Item Catalogs that are contained and updated within COMMBUYS, and (2) PunchOut Catalogs that provide links to vendor-hosted catalog sites. Prior OSD approval is required for the development and use of PunchOut catalogs.

Line item catalogs will vary in complexity and scope depending on: (1) the number of contract users, (2) the variety of products and/or services available under the contract, and (3) other contract-specific terms or requirements. Departments managing OSD-designated statewide contracts or multiple user contracts are expected to work with OSD to develop catalogs that are sufficient to allow other contract users to make appropriate purchases.

Catalog items must include sufficient detail for buyers to select appropriate goods/services and identify applicable prices. The accuracy of the commodity code and goods/service descriptions determines the Commonwealth's ability to analyze purchasing data. Therefore, each catalog item must include a specific commodity code as well as a detailed good/service description.

Line-item catalogs may be created directly by the Department contract manager in COMMBUYS or by having vendors complete a catalog template spreadsheet and submitting it for upload.

Departments should provide guidance to vendors regarding catalog structure and amount of detail required and are required to review and approve catalogs created by vendors prior to publication. Departments should also require vendor review and approval of catalog content, to ensure accuracy each time the contract is updated. Additional information, including the catalog template spreadsheet, may be found in the COMMBUYS Resource Center.

a. Catalog Updates and Compliance

Updates to catalogs may be made based on the specifications set in the RFR and/or contract. Departments are responsible for monitoring revised catalogs for accuracy and compliance with RFR and contract specifications. Both the Department contract manager and the vendor are responsible for ensuring the catalog content is accurate over the life of the contract.

Updates to line-item catalogs are made in the same way that catalogs are initially created and may be done by generating a Change Order within COMMBUYS. Catalog changes are published upon approval of the Change Order.

b. Managing the Vendor Relationship

Once Departments have established a contractual relationship with a vendor, Departments are obligated to actively manage that relationship to ensure vendor performance is meeting the key performance indicators of the contract. Regular communication between the Department contract manager and the vendor contract manager will ensure that there are no misunderstandings about Department or performance expectations. It also is important for the vendor to have access to the Department contract manager. The most successful contractual relationships are those where both parties behave as partners to reach the same agreed upon objectives. Open communication allows vendors to know where they stand, particularly if they are not meeting all expectations. In that case, they should be given the opportunity to correct the problem early in the process, to ensure a successful outcome through the duration of the agreement. Vendors also should alert Departments to any issues they might be having with Department staff in relation to their contracted duties, so the issues may be reviewed and resolved successfully.

IV. PURCHASING THROUGH COMMBUYS

A. Solicit Quotes, as Required

When a purchase requires solicitation of multiple quotes from vendors, Departments must use COMMBUYS to request quotes and receive vendor responses as follows:

- For Statewide Contract MBPOs, Departments must follow the instructions in the [Contract User Guides](#);
- For Departmental Contract MPBOs with multiple vendors, Departments are required to solicit electronic quotes through COMMBUYS. Orders resulting from the quotes must be placed through COMMBUYS.
- For new Departmental Contracts, Departments must set up MBPOs in COMMBUYS to enable submission of electronic quotes or fixed price catalog ordering, as applicable.

Some contracts may require Departments to utilize standardized RFQ and/or Statement of Work templates. Use of contracts must comply with specific contract requirements.

B. Placing Orders through COMMBUYS

Unless subject to an exception, Executive Departments must use COMMBUYS to record all purchasing activity under 801 CMR 21.00. Departments may not implement new ordering systems for goods and services covered by 801 CMR 21.00 outside of COMMBUYS without prior written approval by OSD.

i. Requisition and Purchase Order Requirements

All purchases in COMMBUYS from existing Contracts (MBPOs) must be initiated with a requisition. Upon approval, requisitions are converted into Purchase Orders (POs).

Note: Department Organization Administrators (OAs) may set internal policies exempting specified users or roles from this requirement. These policies must ensure that all transactions obtain appropriate approval consistent with Department Internal Controls and segregation of duties, as well as applicable policies.

POs represent an agreement with a vendor to provide goods or services, including term contracts, orders against contracts, or one-time purchases. POs are completed by indicating the type of PO, adding items, and including ship-to and bill-to addresses and accounting information. POs may be amended, if necessary, via Change Orders.

As described below, different types of POs are used to reflect different purchasing transactions.

a. Purchase Order Types

Purchase Orders serve multiple purposes within COMMBUYS, from transmitting orders to vendors (Open Market and Release POs) to documenting transactions after the fact. Appropriate uses of each type of PO in the system are described below.

PO Type	Used for
Open Market	One-time purchase of non-contract commodities/services (e.g., incidental purchase).
Release	Purchase of commodities or services from existing Contracts.
Request for Payment Authorization (RPA)	Document a purchase after the fact based on authorization outside of COMMBUYS (e.g., emergency purchase, subscription or RPA-enabled Statewide Contract [SWC]).

- *Open Market POs*

Open Market POs are appropriate only in limited circumstances. As noted above, the primary use for this category is incidental purchases.

- *Release POs*

A Release PO is a request to a vendor to purchase goods or services from a specific MBPO. To place orders from existing statewide or Departmental contract MBPOs, Departments must use Release POs. Before a receipt may be processed, there must be a PO in sent status. The receiving of goods and services may be either complete receipt or partial receipt. Items that are being returned must be received and then returned. The receipt of items also may be canceled without first receiving them.

- *RPAs*

Requests for Payment Authorization (RPAs) are used to reflect purchasing transactions that already have occurred outside COMMBUYS. There are two types of RPAs that may be used (1) RPA Release Requisition or (2) RPA Requisition.

Use RPA Release Requisitions if the MBPO is RPA Release-enabled. MBPOs may be RPA release-enabled to accommodate purchases of items that are not typically ordered in advance, such as windshield replacement. Certain statewide contracts have been RPA Release-enabled, as identified in the applicable Contract User Guide.

Use RPA Requisitions if the MBPO is *not* RPA Release-enabled. In cases where a PO cannot be or is not submitted to the vendor prior to product or service delivery under existing contracts, Departments must use RPA Release Requisitions to document those purchases after the fact. RPA Requisitions also may be used to reflect transactions associated with procurement exceptions. This should not be used where POs are required through COMMBUYS for a specific MBPO.

Note: The RPA is a mechanism to record purchases and orders that are authorized outside of COMMBUYS. Approval of an RPA and/or the subsequent invoice transaction in COMMBUYS is not a substitute for processing encumbrance and payment transactions in MMARS. Departments are still required to enter encumbrance and subsequent payment transactions directly into MMARS.

ii. PO Exceptions

Transactions not requiring a PO or RPA through COMMBUYS are limited to the following:

- Executive Departments, with written approval from OSD, may exclude certain defined types of transactions from ordering through COMMBUYS. Exceptions may be issued based on the review of Executive Department business processes. Instructions for submitting requests are included in [Appendix A](#).

iii. Procurement Exception Documentation Requirements

When an acquisition falls under an authorized procurement exception, Departments must use COMMBUYS to document the transaction after the fact (excluding hiring contract employees).

Procurement Exception	Method of Documentation
Legislative exemption	MBPO, PO, or RPA
Emergency contracts	RPA
Collective purchases	MBPO (prior OSD approval is required for purchase)
Interim contracts	Extension of the existing MBPO
Incidental purchases (up to \$10,000)	PO or RPA

iv. PO Approval and Submission to Vendors

After creation of the PO and receipt of required internal approvals, but prior to sending to vendor (by converting a PO into “Sent” status), Departments must ensure that:

- For all POs: all required contract forms have been completed and executed; and
- For Open Market and Release POs: sufficient funds have been encumbered in MMARS for the transaction.

v. Use of COMMBUYS by Other Eligible Entities

Defined eligible entities are authorized to purchase from OSD’s statewide contracts and to maintain COMMBUYS buyer accounts to make purchases as well as to issue their own bids and notices. These entities include:

1. Cities, towns, districts, counties, and other political subdivisions;
2. Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
3. Independent public authorities, commissions, and quasi-public agencies;
4. Local public libraries, public school districts, and charter schools;
5. Public hospitals owned by the Commonwealth;
6. Public institutions of higher education; and
7. Public purchasing cooperatives.

Additionally, non-profit, UFR-certified organizations that do business with the Commonwealth are authorized to purchase from statewide contracts upon verification by OSD. These entities are permitted to maintain limited COMMBUYS accounts, which may be used to purchase from statewide contracts only.

The use of COMMBUYS is not required for, and this policy does not apply to, Non-Executive Departments, Legislative and Judicial Branches, and other Exempt Departments (identified in the joint CTR/OSD [State Finance Law and General Requirements](#) policy as Level I and II Departments), and all other eligible purchasing organizations within Massachusetts borders.

However, when using COMMBUYS, Non-Executive Departments and other eligible organizations are expected to adhere to all system requirements, all required terms for specific statewide contracts, and to the terms of their respective user agreements for COMMBUYS.

Eligible non-Executive Departments are encouraged to take advantage of the COMMBUYS functionality to the fullest extent possible. OSD's Training, Outreach, Enablement, and Help Desk teams offer a variety of resources to assist with system set-up and use. In addition, OSD maintains a number of online resources that buyers may utilize, including statewide contract lists, Job Aids, and more. For additional information, please visit the OSD homepage.

V. COMPTROLLER OVERSIGHT

All obligations and expenditures must be processed in a timely manner in MMARS, as prescribed by the CTR. Pre-encumbrance and encumbrance documents are processed to reserve funds for obligations/contracts. All payments for commodities received and services rendered are processed in MMARS.

All encumbrance transactions must be processed according to the accounting prescriptions set forth in the CTR's *Expenditure Classification Handbook*. The major transactions are described later in this section. These transactions initiate the outright purchase, lease, rental, fee for service, or license for commodities and services covered under 801 CMR 21.00 and 808 CMR 1.00.

A descriptive list of pertinent MMARS transactions and associated requirements for documentation and approval follows. For more detailed transaction instructions, consult the MMARS website.

Note: References to MMARS transactions only apply to those entities that use the state accounting system, MMARS.

A. MMARS Transactions

Please see CTR's *Expenditure Classification Handbook* to determine which transactions apply to the object code selected for the purchase.

Under MMARS, the term "commodity" applies to both goods and services. Goods include, but are not limited to, any articles of trade, items, products, supplies, information technology resources, automated data processing and telecommunication hardware, software, and systems. Services include, but are not limited to, furnishing of time, labor, effort, specialized skills by a contractor including operational, professional, maintenance, consultant, maintenance and repair, non-professional, and human and social services.

The contract-related MMARS documents are considered “commodity-based” documents and are the only MMARS documents with a “commodity” line. These documents require a commodity code. The encumbrance and payment documents include:

- **RQS (Standard Requisition)** – pre-encumbrance for the CT, RPO, and PC, that may be used to reserve funds prior to encumbering.
- **CT (Contract)** – encumbrance for contracts for services, leases that are less than six months and construction.
- **PC (Commodity Purchase Order)** – encumbrance for contracts for commodities that are “goods.”
- **PRC (Payment Request)** – the payment document for the CT, PC, and the RPO (manual payment only when authorized by CTR).
- **RPO (Recurring Payment Order)** – encumbrance for recurring payments. The RPO is required for all space leases (Object Code G01), all TELP object codes (U08/L02-L12/N62), all operating and capital leases longer than six months (U09/L22-L32/N63), ready payments (human and social service payments under [815 CMR 3.00](#)), maintenance contracts, and other contracts with scheduled payments.
- **PRM (Payment Request Matching Document)** – the payment document for the RPO that is automatically generated by the system.

i. Contract-Related MMARS Transaction Guidance.

For statewide contracts, Departments must enter the Master Agreement (MA) number and must reference the Request for Response (RFR) number as part of the Board Award Field.

B. Non-Commodity Based Encumbrances

Non-commodity based encumbrances reserve funds for any reimbursements to employee-related expenses, pension and insurance related expenses, postage, subscriptions and memberships, advertising expenses, fees, fines, licenses and permits, confidential investigation expenses, donations, exhibits/displays, electricity, sewage disposal, water, natural gas, ***incidental purchases, and other expenditures that do not require a procurement and contract.*** The encumbrance and payment documents include:

- **GAP (General Accounting Pre-Encumbrance)** – encumbrance to reserve funds prior to encumbering a GAE, with the exception of incidental purchase object codes.
- **GAE (General Accounting Encumbrance)** – encumbrance for obligations not requiring a procurement and contract, including incidental purchases.
- **GAX (Generate Accounting Expense Expenditure)** – the payment document for non-incidental purchase payments encumbered with a GAE.
- **INP (Incidental Payment)** – the payment document for incidental purchase payments encumbered with a GAE.

Note: Openorder Event Type: The use of an Openorder event type (allowed on the CT and GAE encumbrance) is not considered a procurement. Openorder allows for the reservation of funds for multiple contractors. It is an accounting treatment and does not take the place of a procurement method. Evidence of an appropriate procurement and contract for each contractor must be kept in the Department's procurement file. Please contact the Comptroller for more information about the Openorder.

C. PC Approval Process

There is no secondary approval for **commodity purchases** exceeding \$150,000. PC documents that require an override in MMARS are to be forwarded to the Executive Office for Administration and Finance (ANF) Budget staff for approval.

D. Delegation Levels

For **services**, the transaction delegation threshold is \$500,000 and those secondary approvals are completed in accordance with procedures established by CTR. Departments must be able to document and verify that all purchases have been made in accordance with prescribed laws, regulations, policies, and procedures to ensure that the acquisition represents "best value" to the Commonwealth. Departments may not manipulate contracts or contract amendments to avoid secondary review for encumbrances exceeding the delegation limit, e.g. splitting contracts or contract amendments, or encumbering less than the maximum obligation of a contract.

E. CTR Oversight Review

Process for CT and RPO Transactions Exceeding a Department's Delegation Threshold Limit.

CT and RPO transactions that exceed a Department's transaction delegation limit require secondary review by CTR. Departments are required to complete the one-page *CTR Encumbrance/Contract Transmittal* Form and submit the required paperwork, which will be reviewed by the CTR Contracts Unit. Upon receipt of the CTR Encumbrance/Contract Transmittal Form and the required paperwork, the Contracts Unit staff will review the package and, if appropriate, finalize the encumbrance in MMARS. CTR will reject documents if the contract package does not include all of the required paperwork or if it has errors in MMARS. If rejected, CTR will insert a Document Comment into the CT or RPO outlining the issues. In addition, an e-mail is sent to the Departments' MMARS Liaisons.

The chart below delineates delegation limits for Master Agreements, commodities, services, and incidental purchases:

MMARS DOCUMENT	DELEGATION LIMIT FOR TOTAL DURATION OF DOCUMENT	RESTRICTIONS
MA Master Agreement	no limit	Department transactions referencing Statewide Contract MAs managed by OSD will process automatically without secondary review.
PC Commodities	No limit	Includes Departmental MAs referencing a PC.
CT Services	\$500,000	Includes Departmental MAs referencing a CT.
RPO Ready/Recurring Services/Leases	\$500,000	Includes Department MA referencing RPO.
GAE/INP Incidental Purchases	\$10,000	One-time, non-recurring need.

VI. STATE GRANT POSTING REQUIREMENTS

Pursuant to CTR's policy on [State Grants, Federal Sub-Grants and Subsidies](#), Departments must use COMMBUYS for the following activity related to State Grants:

- **For awards of discretionary grant funding:** Distribute the grant application by issuing a COMMBUYS Bid, and post the results of grantee selection by creating an MBPO. Departments must use the Grant Application type code to identify Bids that include grant applications, and Grant Award type code to identify MBPOs showing results of grantee selection.
- **For all discretionary grants, where grantee selection was made through any process other than an open public award process** (excluding incidental and earmarked grants): Post a notice of intent to award grant(s) or Best Value Grant Award Notice, as a Bid. Use the Notice of Intent type code to identify such notices.

COMMBUYS provides a designated Commodity Code for Grants (00-00-00, Grant Opportunity) for use by Departments for inclusion in Bid Items and to create notification lists for potential grant applicants. Please note, this commodity code is specific to Massachusetts and COMMBUYS, so no information about the code will be available on the UNSPSC website.

Note: Departments may leave the Type Code field blank if the appropriate type code is not yet available.

VII. Appendices

- A. INSTRUCTIONS FOR SUBMITTING REQUESTS FOR OSD APPROVAL**
- B. PROCUREMENT PROCESS AT A GLANCE**
- C. 801 CMR 21.00 OBJECT CODE LIMITS FOR INCIDENTAL PURCHASES**
- D. TRANSACTION MATRIX**
- E. ADDITIONAL BID SPECIFICATION CATEGORIES AND COMPENSATION STRUCTURES TO CONSIDER**
- F. PURCHASE OF SERVICE (POS) BID SPECIFICATIONS, ASSOCIATED POLICIES AND GUIDANCE**

Appendix A

Instructions for Submitting Requests for OSD Approval of Non-Standard Procurement Transactions

1. Requests for Authorization to Issue Bid for Goods/Services Covered by Statewide Contract

To request authorization, Departments must submit a written request to purchasing.agent@massmail.state.ma.us with the subject line: "Request for procurement approval" and include the following:

- a. Name of the Department requesting approval;
- b. Contact person regarding the request, including telephone and email information
- c. The statewide contract (by name and number) for which an exception is sought;
- d. A detailed explanation of why the statewide contract does not meet the Department's needs; and
- e. The anticipated procurement duration and total procurement value.

A tracking number will be assigned and the sending Department will receive an electronic receipt. Within three business days of receipt, OSD will approve or reject the Department's request.

2. Using Collective Purchase Contracts, including GSA, or another state's contracts:

When using contracts administered by the General Services Administration (GSA) or another state, Departments must obtain approval from the Operational Services Division (OSD) prior to use and must adhere to the following policy:

When a Statewide Contract exists:

Departments must request and receive OSD permission, as described in Section C, iii.

When a Statewide Contract does not exist:

A Department must notify the Assistant Secretary for Operational Services at purchasing.agent@massmail.state.ma.us, in writing, of its interest in purchasing off a GSA or another state's collective purchase contract. Such notification should include an analysis of whether any current statewide contract or Commonwealth Executive Department contracts could meet (or not meet) their needs and, if such contracts do exist, why the Department is not using such contract. After review, OSD will make a determination of the appropriate next steps including, but not limited to, the following:

- a. Determine if there is a sufficient need for the commodity/service to justify OSD conducting a statewide procurement and then executing a Statewide Contract; or
- b. Recommend that the Department conduct a procurement for the necessary commodity/service using the GSA or another state's collective purchase contract's prices and contract terms as the benchmark for best value; or
- c. Approve the Department's use of the other contract(s) based on the collective purchase competitive procurement exception available under 801 CMR 21.05 (4) and conditional upon

the Department adhering to the specific conditions in the GSA or another state's collective purchase contract(s) to ensure that the contract satisfies the requirements of MGL Chapter 7, section 22 and section 22A. For example, if a Department were using a GSA contract (and the GSA contract was established as a pre-qualification list without price competition), these conditions would include, among other requirements, that a Department seek competitive quotes from the list of "qualified" contractors on the GSA contract to ensure that the "fair, open, and competitive" requirements of the Commonwealth's procurement statute are met.

OSD will respond to Department requests for a specific commodity/service not on statewide contract, in writing, specifying what action(s) is necessary. Approval to use a GSA or another state's collective purchase contract(s) will be made on a case by case basis within three business days from receipt of the request.

3. Due Diligence Posting Requirements:

OSD requires that Due Diligence postings meet the criteria outlined below.

Written Request

The Chief Procurement Officer and/or Chief Fiscal Officer of the Department intending to use the Due Diligence posting provision must submit a **written request** to OSD. All written requests and associated postings on COMMBUYS must reference "Due Diligence posting request" in the document title. The following information must be included in the written request for approval and must be submitted to OSD at purchasing.agent@massmail.state.ma.us:

- A detailed description of the commodity or service being offered or sought;
- Name of the company that is offering the commodity and/or service, if applicable;
- An explanation of why the Department is seeking to post notice of the offer rather than conduct a competitive procurement, including all research and due diligence conducted by the Department that resulted in the decision to exercise this option;
- A copy of the Department's Notice of Intent, including the specifications being sought in the posting, or if a Department is posting a notice of its intention to award a contract to a specific company under any of the three options (Best Value Offer, Intent to Purchase a Proprietary Product or Service, or Intent to Purchase Services from Another Government Entity), and a complete and detailed list of what is being offered by the company. The Notice of Intent will be posted on COMMBUYS if the written request is approved in writing by OSD; see the Due Diligence Posting Template available on the OSD Forms webpage.
- Proposed duration for posting the notice on COMMBUYS: Please note that, while the timeframe for posting the notice on COMMBUYS may be brief, it must be posted for at least 14 calendar days. World Trade Organization requirements may mandate a longer posting period based on the total dollar value of the potential contract.

Post on COMMBUYS

Once written approval has been received, the Department must post the approval notice on COMMBUYS in the same manner as other bids are posted. If no responses are submitted in response to the notice, the Department may proceed with a contract. If responses are submitted, the Department must conduct a procurement that is fair, open, and competitive or evaluate the responses.

Document in Procurement File

All documentation, correspondence, and information must be retained by the Department in a procurement file.

4. PO Exceptions in COMMBUYS

To request an exception to posting POs in COMMBUYS, an Executive Department must email purchasing.agent@massmail.state.ma.us. Requests must be submitted by the Agency Head and must include the following information:

- The object classes and codes associated with the transactions;
- Description of the existing ordering system and its purpose, including detailed information on the technology used to develop the system, interface with other systems (e.g., MMARS), system security requirements, volume of transactions, number of people using the system;
- Description of the Department's business requirements that make use of COMMBUYS impractical or otherwise unnecessary; and
- Technical and business contacts within the Department for OSD to contact with questions about the system.

Appendix B

Procurement Process at a Glance - Quick Reference Chart for the Procurement of Goods and Services under 801CMR21.00

Procurement Value	Procurement Process	Procurement Responsibility	Contract Forms	Secondary Reviews
Large procurement (Total value greater than \$150,000)	<p>Post RFR on COMMBUYS as a Bid. The RFR also may be advertised elsewhere (optional), but must refer Bidders to COMMBUYS.</p> <p>Must accept written response ONLY online via COMMBUYS.</p> <p>Supplier Diversity Program (SDP) Plan required.</p>	<p>OSD conducts statewide contract procurements or designates to a Department.</p> <p>Departments may conduct their own procurement: (1) if the commodity/ service is not available on statewide contract or (2) if the commodity/ service is available on a statewide contract and permission to not use the statewide contract and to procure on own is requested and approved in writing by OSD.</p>	<p>Commonwealth Terms and Conditions (T&C) signed once by each contractor.</p> <p>Standard Contract Form (SCF).</p> <p>Other RFR attachments.</p> <p>Procurements for human and social services use the Commonwealth Terms and Conditions for Human and Social Services.</p> <p>See CTR policy State Finance Law and General Requirements and Good and Services for additional details for contract execution (available on the CTR's website).</p>	Yes, if greater than \$500,000 for services [CT] by CTR.

Procurement Value	Procurement Process	Procurement Responsibility	Contract Forms	Secondary Reviews
Small procurement (Total value equal to or less than \$150,000)	<p>Post RFR on COMMBUYS as a Bid. The RFR also may be distributed in newspapers (optional) or as required by statute.</p> <p>Must accept sealed written response ONLY online via COMMBUYS.</p> <p>Supplier Diversity Program (SDP) Plan encouraged.</p> <p>As required by the Small Business Purchasing Program, award to a registered small business, if meets all RFR requirements.</p>	<p>This type of procurement is conducted by each Department individually: (1) if the commodity/ service is not available on statewide contract or (2) if the commodity/ service is available on a statewide contract and permission to not use the statewide contract and to procure on own is requested and approved in writing by the Assistant Secretary for Operational Services, or designee.</p>	<p>Commonwealth Terms and Conditions (T&C) signed once by each contractor.</p> <p>Standard Contract Form (SCF).</p> <p>Other RFR attachments.</p> <p>Procurements for human and social services use the Commonwealth Terms and Conditions for Human and Social Services.</p> <p>See CTR policy State Finance Law and General Requirements and Good and Services for additional details for contract execution (available on the CTR's website).</p>	<p>No, if Department has full delegation.</p>

Procurement Value	Procurement Process	Procurement Responsibility	Contract Forms	Secondary Reviews
Incidental purchase (Total value less than \$10,000)	Reasonable price. See “Incidental Purchase” guidance	This type of procurement is conducted by each Department individually, if the commodity/service is not available on statewide contract.	Invoice. SCF/T&C not required for incidental purchases <\$5,000; See chart in Appendix B for object classes that do not require SCF/T&C for purchases up to \$10,000.	No

Appendix C

801 CMR 21.00 Object Code Limits For Incidental Purchases (INP)

Note: The Expenditure Classification Handbook (ECH) lists Incidental Purchase guidance for each object code.

Incidental Purchase Transaction Matrix

The matrix below provides direction to Departments for making incidental purchases of goods and services that are not available on Statewide Contract.

Incidental Purchases/Purchases up to \$10,000 (purchases NOT on Statewide Contract)	Transaction	Secondary Review	Contract Documentation Required
Commodity or Service <u>not</u> on Statewide Contract	INP (<\$5,000)	N/A	Object codes in EE, FF, GG, JJ, KK RR do not require T&C/SCF, invoice only* Object codes in HH, LL, MM, NN do not require T&C/SCF <\$5,000, invoice only*
Commodity or Service <u>not</u> on Statewide Contract	GAP/GAE/GAX (>\$5,000-\$10,000)	N/A	Object codes in HH, LL, MM, NN require T&C/SCF >\$5,000
Commodity or Service <u>not</u> on Statewide Contract	RQS/CT/PRC RPO/PRM (service) QS/PC/PRC (commodity) (any amount)	N/A	T&C/SCF required if these transactions used

*T&C/SCF is recommended for any purchase requiring complex specifications, performance terms, or contractual terms (such as ownership of deliverables). The AGO has advised against Departments signing vendor contracts, purchase orders, or invoices with contractual terms, including website shopping carts and click-through agreements.

Appendix D

Transaction Matrix

The purpose of the matrix below is to give direction to user Departments for purchasing commodities and services. When the “Contract Documentation Required” column indicates that a statewide contract is required, it assumes that there is a statewide contract executed and on file with the Operational Services Division and the Master Agreement (MA) is available for Departmental use.

Statewide Contracts Any Value	Transaction	Secondary Review	Contract Documentation Required
Commodity on Statewide Contract	RQS/PC/PRC,	N/A	MA number referencing a statewide contract. <i>Purchase Order for Commodities and/or Services</i> (or the equivalent).
Commodity leases on statewide contract	RQS/CT/PRC RPO/PRM	N/A	MA number referencing a statewide contract. <i>Purchase Order for Commodities and/or Services</i> (or the equivalent).
Services on Statewide Contract	RQS/CT/PRC	N/A	MA number referencing a statewide contract. <i>Purchase Order for Commodities and/or Services</i> (or the equivalent).

Incidental Purchases / Purchases up to \$10,000 (purchases NOT on Statewide Contract)	Transaction	Secondary Review	Contract Documentation Required
Commodity or Service <u>not</u> on Statewide Contract	INP (<\$5,000)	N/A	Object codes in EE, FF, GG, JJ, KK, RR do not require T&C/SCF, invoice only * Object codes in HH, LL, MM, NN do not require T&C/SCF <\$5,000, invoice only *
Commodity or Service <u>not</u> on Statewide Contract	GAP/GAE/GA X (>\$5,000- \$10,000)	N/A	Object codes in HH, LL, MM, NN require T&C/SCF >\$5,000
Commodity or Service <u>not</u> on Statewide Contract	RQS/CT/PRC RPO/PRM (service) QS/PC/PRC (commodity) (any amount)	N/A	T&C/SCF required if these transactions used

*T&C/SCF is recommended for any purchase requiring complex specifications, performance terms, or contractual terms (such as ownership of deliverables). The AGO has advised against Departments signing vendor contracts, purchase orders, or invoices with contractual terms, including website shopping carts and click-through agreements.

<\$150,000 - Small Procurements	Transaction	Secondary Review	Contract Documentation Required
Commodity or Service <u>not</u> on Statewide Contract	RQS/PC/PRC (Commodity) RQS/CT/PRC, RPO/PRM (Service)	NA	* <i>Standard Contract Form</i> with ink signature and RFR reference number in the MMARS Board Award field are always required. RFR and electronic responses are required through COMMBUYS. Departments must check the “SBPP Only” button when posting a small procurement RFR.
Commodity leases <u>not</u> on Statewide Contract	RQS/CT/PRC RPO/PRM	NA	* <i>Standard Contract Form</i> , with ink signature and RFR reference number in the MMARS Board Award field are always required. RFR and electronic responses are required through COMMBUYS. <i>Purchase Order for Commodities and/or Services (or the equivalent)</i>

>\$150,000 - Large Procurements	Transaction	Secondary Review	Contract Documentation Required
Commodity or Service <u>not</u> on Statewide Contract	RQS/PC/PRC (Commodity) RQS/CT/PRC, RPO/PRM (Service)	Generally, \$150,000 or above by OSD	* <i>Standard Contract Form</i> with ink signature and RFR reference number in the MMARS Board Award field are always required, <u>Solicitation</u> : two screen shots: (a) the SUMMARY page, including the Related Contract Number value and (b) RULES page specifying “ <i>Online Responses Are Accepted.</i> ”
Commodity leases <u>not</u> on Statewide Contract	RQS/CT/PRC, RPO/PRM	Generally, \$500,000 or above by CTR	* <i>Standard Contract Form</i> , RFR and electronic responses are required through COMMBUYS a COMMBUYS screen print of the RFR and response files, RFR reference number in the MMARS Board Award field. <i>Purchase Order for Commodities and/or Services (or the equivalent).</i>

*The contractor must sign the applicable *Commonwealths Terms and Conditions* prior to executing the *Standard Contract Form*. The applicable *Commonwealth Terms and Conditions* needs to be signed only once for the contractor to do business with any Commonwealth Department. It must be recorded in the MMARS Vendor/Customer (VCUST) table. Once recorded, Departments should NOT ask contractors to re-sign the *Commonwealth Terms and Conditions* unless required due to a change in Tax Identification Number or other business change.

Appendix E

Additional Bid Specification Categories and Compensation Structures to Consider

Performance Contracting: Performance contracting ensures that contract dollars spent by the Commonwealth on the purchase of commodities and services are, in fact, producing the desired results and meeting the requirements of the contract. In general, payment is contingent upon results rather than effort. RFRs should state clearly the services expected, define performance standards and measurable outcomes, identify performance evaluation methods, and include positive or negative performance incentives, if appropriate.

Use of Contractor-Owned Materials During Performance: Sometimes the products are owned or copyrighted by the contractor and are merely provided to fulfill contract requirements. These products should be identified as contractor material, performance requirements, or benefits. A common example of a “benefit” is computer software that is owned and copyrighted by a contractor but is adapted or redesigned specifically for a Department. The Department would contract for this redesign and for a license to use the software. The contract also might include provisions for additional design plans, upgrades, and maintenance. Also, Departments could purchase training manuals and have a usage license. However, the contractor would maintain ownership and copyright of the content and design of the manuals. The contractor has more of an interest in ownership and copyright of the design and content of the manuals, since these tools may be adapted for a variety of different clients.

Departments should weigh carefully the risk of relinquishing any rights to products that have been created or developed utilizing Commonwealth funds, since the Commonwealth may be entitled to recoup a share of any profits and should consult appropriate legal staff when addressing these issues.

Brand Name or Equivalent: Substantially equal specifications should be used unless the SSST determines that:

- No specification for a common or general use item is available.
- The nature of the product or the nature of the Department’s requirements makes use of a brand name or equal specification suitable for the procurement.
- Use of a brand name or equal specification is in the Department’s or Commonwealth’s best interests.

Use of brand name-only specifications or specifications that restrict a commodity to a pre-determined brand or design specifications are the most restrictive forms of competitive procurement and should be used only if essential. When using brand names as part of the specification, procuring Departments should use “or equal,” to substantiate that equivalent products also will be considered. Include additional specifications, i.e., particular design, performance, and other characteristics of the brand name to ensure that the product identified is the product required.

Performance and Payment Timeframes that Continue Beyond the Duration of the Contract: Departments may consider including the language from the RFR - Other Specifications pertaining to term leases, rentals, maintenance, or other agreements for services entered into during the duration of the contract, if the performance and payment time frames extend beyond the duration of the contract. The RFR may state that the terms may remain in effect for performance and payment purposes (limited to a clearly defined timeframe, e.g.

“....up to 24 months beyond the final end date of the contract”). However, it also must state that no new leases, rentals, maintenance, or other agreements for services will be executed after the contract has expired. This also applies to “project” services, such as a consultant who is hired for a two-year project in the final year of the contract. Also, any contract termination or suspension will not automatically terminate any leases, rentals, maintenance, or other agreements for services already in place unless the Department also terminates said leases, rentals, maintenance, or other agreements for service, which were executed pursuant to the main contract.

Changes to Performance and Contract Specifications that Require a Formal Contract Amendment: The RFR must specify the types of amendments (formal and administrative) that may occur. Formal amendments require a newly executed *Standard Contract Form* and are subject to recordkeeping requirements. Administrative changes do not require a formal amendment; however, they must be documented in the procurement file in COMMBUYS. The requirements for executing amendments, including limitations on amendments, must be stated clearly in the RFR. Certain changes, if delineated clearly in the RFR, may be considered administrative changes and will not require a formal amendment. Such changes may include, but are not limited to, certain programmatic changes (which are not so significant that the services no longer reflect those originally procured), clerical changes (but not a change in contractor identity), and budget variations that do not result in an increase to the maximum obligation. The RFR should state the degree to which shifting line items within a budget may be considered administrative. Please note that a formal amendment is required for increases to the maximum obligation even though one of the RFR’s required specifications states that expansion funding may be incorporated into the contract.

Bidder Qualification Criteria:

In addition to delineating the performance specifications, a Department may use this section of the RFR to require Bidders to present:

- A profile of their firm’s operations, qualifications, and the organization’s capabilities. Departments may request samples of products or copies of reports to verify statements regarding capabilities.
- Certification that the Bidder is not debarred.
- A listing of any current or past litigation that may be relevant to the commodities or services provided by the Bidder.
- A detailed description of the Bidder’s resources and experience relevant to the RFR performance requirements, including specific expertise in serving specific populations and/or verification that the Bidder is authorized to sell or distribute specific commodities or services.
- A statement about the historical development of the Bidder’s organization.
- An organizational chart.
- A statement on the experience of Bidder’s staff and the total number of employees (distinguishing between administrative staff, management, principal partners or officers, field, technical, and customer support).
- Copies of professional licenses.

- Compliance with environmental regulations and/or any other environmental practices that may benefit the Commonwealth.
- The location of the offices from which the work will be managed and the number of staff employed at each office.
- The number of years the Bidder has been in business and/or the number of years the Bidder has been in the business identified in the RFR (which may be separate and distinctly different from their main business line).
- Key personnel of the business and key personnel assigned to meet the Commonwealth's needs under the contract. (A resume or statement of qualifications must be attached to all consultant contracts pursuant to M.G.L. c. 29, s. 29A.) Departments should review carefully resumes of key personnel to ensure that the skills of the individuals meet those required in the RFR. Departments also should ensure that any changes in key personnel during the contract term require the Department's pre-approval.

Note: In the development of the list of required documentation, Departments should be mindful of the time and expenses that may be required of the Bidders to respond to the RFR. Only documentation that the Department plans to use in the evaluation process should be required for submission by the Bidders.

Key Personnel: The RFR may require Bidders to provide details on the key personnel associated with the proposed contract work. In addition to naming a contract manager, the Bidder also might be asked for an organizational chart and resumes of the key personnel. This information allows Departments to see the qualities and experience of all key staff, as well as their place in the vendor's organization.

The contract/project manager is responsible for oversight and management of contract performance and will act as the contact person for receipt of notice and other communications between the parties. The RFR may state that the contract or project manager or any of the agreed upon key personnel may not be changed without prior written notice to the Department or that an agreement must be executed between the contractor and the Department prior to the change. The RFR also may specify that the contract manager be responsible for timely written responses, such as within five business days, for all information requests from the SSSL and attendance at meetings required by the SSSL.

Identification of Subcontractors: A Department should decide whether contractors will be authorized to use subcontractors to complete contract performance and, if so, include this provision in the RFR. Subcontracting is a good opportunity to use the full list of SDO-certified firms that are listed on the Supplier Diversity Office webpage of OSD. Large procurements require the submission of an SDP Plan. For small procurements, Departments may require an SDP Plan for subcontracting relationships. The Commonwealth may require a Bidder to provide a copy of any subcontract and any additional supporting documentation, verifying that the subcontractor is in good standing, e.g., has complied with tax requirements and has not been debarred. Prior approval of the Department is required for any subcontracted service of the agreement. The Commonwealth reserves the right to reject any subcontractor if it is in Commonwealth's best interest to do so.

All subcontracts should be in writing and contain provisions that are functionally identical to, consistent with, and subject to the provisions of a contract, including reporting and compliance requirements. Unless otherwise

provided by law, the Commonwealth is not bound by any provisions contained in any subcontract. Contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors.

Financial Statements: An RFR may require financial statements from Bidders to evaluate their financial stability. Bidders may be required to demonstrate sound financial condition or that appropriate corrective action is being taken to resolve identified financial problems. Bidders also may be required to disclose details of any criminal investigation, indictment, debarment, or other litigation against the firm that might adversely affect its ability to complete its contract performance. In addition to information provided by the Bidder, there are a variety of financial reporting services that may be used by Departments when evaluating the financial strength of a Bidder. Departments may require the independent reports of such services as part of the response.

Benchmarking: Departments may consider informing the Bidders of its intent to use research pertaining to the RFR Key Performance Indicators (KPIs); which may include on-time delivery, customer satisfaction, or prices paid by other purchasers of the commodity or service to establish benchmarks from which to negotiate.

Departments should consider and analyze the prices paid by other Departments, other states, and the federal government (General Services Administration [GSA] contracts) for the same or similar commodity or service to determine the reasonableness of prices offered by the prospective Bidder. Departments may wish to state they will use benchmarking throughout the contract's duration to keep prices in line with or lower than those paid by other purchasers.

Risk of Loss, Performance Bonds, and Insurance: Pursuant to M.G.L. c. 29, s. 30, the Commonwealth is self-insured. Therefore, contractors are required to bear the risk of loss for any deliverables, data, or their own materials. The risk of loss may not shift to a Department until possession, ownership, and full legal title of the items are transferred to and accepted by a Department. Contract prices usually reflect the contractor's expenses for providing adequate insurance to cover this risk of loss. Departments should consider whether the procurement warrants a bond or insurance.

Departments may require Bidders to submit performance bonds that usually are based upon a percentage of the contract price to be collected by a Department in the event the contractor breaches or defaults. Performance bonds are required for certain types of procurements, such as construction and other high-risk situations. Performance bonds should be used sparingly and only in high risk situations, since this requirement usually increases the contract price to the Commonwealth and will limit the number of vendors competing for the work.

A Certificate of Liability Insurance (professional or personal injury) also may be required to show evidence of insurance coverage for professional malpractice and/or personal injury that result in connection with the performance of a contract, naming the Commonwealth as an insured party. Further, any contractors that exercise independent judgment or decision making (doctors, attorneys, arbitrators) should carry professional malpractice or personal injury insurance. Independent decision making, even if daily activities are performed on Commonwealth premises and with Department involvement, will take these individuals outside the protections of the Commonwealth under M.G.L. c. 258.

Regardless of their named status in a contract, independent decision making implies independent contractor status and these individuals must be covered by valid insurance policies during the period of the contract. Other

positions, such as temporary help, should be covered by their employers. When contracting with individuals who also happen to work for a corporation, partnership, or other entity, Departments should ensure that these individuals' contract activities also are covered under the entity's policy. In most instances, contract activities will be outside of the scope of standard insurance policies, therefore, these individuals must obtain separate policies.

Tax Compliance Certification: Although tax compliance is certified when the Bidder executes the *Standard Contract Form* and Instructions, the SSST also may require the Bidder to demonstrate compliance with Commonwealth's tax laws pursuant to M.G.L. c. 62C, ss. 49A, 51 and 52 and M.G.L. c. 181, s 16. The SSST may allow the Bidder to do this with a self-certification or may require a Certificate of Good Standing that has been issued by the Massachusetts Department of Revenue (DOR) within the past year. See www.mass.gov/dor for more information.

Bidders are encouraged to apply for a Certificate of Good Standing, even if the SSST has not required it, either online or by faxing a request to DOR at 617-887-6262. DOR will notify the requestor if there are any remaining liabilities or tax requirements. Certificates will be issued only if the organization is in full compliance. Since all applications require extensive research, the Bidder should allow sufficient time to process.

Compensation Structure

Common Compensation Structures that May Be Either Rate or Maximum Obligation:

Project-Based Compensation: Project-based compensation is used when contract performance cannot be divided neatly into severable units. The payment may be a flat rate-, a deliverable-, or milestone-based rate structure, or an all-inclusive amount (all related costs, overhead, administrative costs, time, materials, etc.). The Bidder provides an actual or estimated cost for the completed contract performance based on the RFR specifications (which should be very comprehensive). Payment may be based on a schedule of predetermined events or deliverables, or upon completion and acceptance by the Department of the entire project. Contractors who underestimate their costs may not request additional compensation.

Unit-Based Compensation: A unit structure pertains to rates that are set by the unit (per item, hour, day, week, or service). Unit-based compensation is valuable when a performance-based compensation structure is not feasible. Units are customarily independent components of a contract and the number may change depending on the Department's needs. A Department pays only for the units requested and delivered.

Contingency Fee or Revenue Generating Structure: Contingency fee contracts allow contractors to be paid a percentage fee from revenues collected on behalf of the Commonwealth. These contracts must be legislatively authorized and procured under 801 CMR 21.00 (with an approval of the RFR and accounting mechanisms by the CTR; see 815 CMR 8.00). They are not procurement exceptions.

Appendix F

Purchase of Service (POS) Bid Specifications and Guidance

As previously indicated, 801 CMR 21.00 applies to goods and services, including human and social services. This Policy refers to “commodities and services” when describing requirements applicable to all 801 CMR 21.00 procurements. Human and social service procurements, referred to as “purchase of service” or POS often include specialized and unique requirements. These POS-specific requirements and recommendations are summarized below. For the purposes of this Policy, POS refers to human and social services classified under the “MM3” or “M03” object codes in the Office of the Comptroller’s Expenditure Classification Handbook.

Note: Many POS contracts now are subject to rate setting pursuant to Chapter 257 of the Acts of 2008. For contracts subject to rate setting, certain of the considerations below will not apply.

Commonwealth Terms and Conditions for Human and Social Services

Most 801 CMR 21.00 transactions use the Commonwealth’s Terms and Conditions. Contracts for human and social services use the [Commonwealth Terms and Conditions for Human and Social Services](#), located on the OSD Forms webpage. See CTR policy State Finance Law and General Requirements and Good and Services for additional details for contract execution (available on the CTR’s website).

RFR-Specific POS Considerations

Additional Considerations regarding compensation:

If considering a compensation structure that uses risk sharing, Departments should consult with OSD and their Secretariat prior to using a risk-sharing structure. A waiver of regulation *808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services*, may be necessary.

Another tool available to determine the value of the outcomes is the analysis of the actual costs experienced by a group of similar programs through the use of the data contained in *Uniform Financial Statements and Independent Auditor’s Reports* (see the associated guidance entitled *General Audit and Compliance Requirements* via a link at the end of this document). In these instances, additional factors, such as differences between the services of similar programs and those services being procured, should be considered.

There are several other items that should be noted by human and social service Departments when developing a pricing system. Several of these common issues are discussed below. Other issues may arise, in addition to those identified below, as pricing structures are developed.

Utilization factor for unit rates: Departments may choose to consider anticipated program utilization when developing prices in a unit rate compensation structure. In effect, a slightly higher unit rate is developed to compensate for the fact that the program will not always operate at maximum (peak) capacity due to client absences or other reasons. Since an absence does not alleviate the program’s operating costs, a slightly higher unit rate will mitigate this potential loss. In many programs, a utilization factor may be appropriate if the Department recognizes that there may be vacancies in the program during the contract term which may impair

the contractor's ability to provide services to other consumers in the program. The exact utilization factor that is negotiated should be based on the program's prior utilization history, if available, or the average for all programs of the same type.

The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In this case, the contractor is required to provide services up to the total capacity purchased by the contract (see line 5 of *POS Attachment 4: Rate Calculation/Maximum Obligation Calculation Page* located on the OSD Forms webpage) for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering "free" services; rather, in these cases, the contractor has been fully reimbursed for the costs associated with the program in a period of time that is shorter than the full contract duration. Conversely, Departments may be able to reasonably project that a program may be fully utilized during the contract period, and the use of a utilization factor would not be appropriate. As a general rule, utilization factors of 85% to 100% are considered reasonable. Utilization factors of less than 85% are discouraged, except in exceptional circumstances.

Commercial fees for for-profit contractors pursuant to 808 CMR 1.03(6): A number of human and social service contractors are organized on a for-profit basis. To avoid confusion and subsequent audit findings, Departments must be explicit in the contract about the amount of fees in excess of cost, if any, that may be earned by a for-profit contractor. Each contract executed between a Department and a for-profit contractor must either 1) explicitly indicate when a commercial fee has not been established by indicating that the earnings allowance is zero or 2) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract. This requirement of explicitly stating either zero or the percentage or dollar amount negotiated applies to all available compensation structures and all types of POS contracts with the exception of cost reimbursement contracts.

The amount of fees that a contractor may retain must be noted, for informational purposes only, on *POS Attachment 3, Fiscal Year Program Budget*. A commercial fee may not be added into the price (rate) paid by the Commonwealth. In those contracts where an Attachment 3 is not used, the amount of the commercial fee, if any, must be included within the contract specifications.

Departments may consider several approaches in developing a reasonable commercial fee. To arrive at a commercial fee, Departments may agree upon a fee based on the maximum obligation of the contract or the total payments made by the Department or a percentage of the surplus as defined in 808 CMR 1.03(6). In addition, when determining what is a reasonable fee, Departments may want to consider profit margins of the for-profit industry as a whole, if available, or the limitations on surplus funds generated by not-for-profit contractors of human and social service programs (see 808 CMR 1.03(7)).

It is important to remember that, regardless of the fees derived by the above methods prospectively, for-profit contractors may not retain a commercial fee from a contract with a deficit operating result. In addition, cost reimbursement contracts cannot, by their nature, have a commercial fee identified. Cost reimbursement contracts only pay for actual costs incurred by the provider, and, thus, do not allow for any surplus.

The provisions of the commercial fee also apply to Chapter 71B Approved Special Education Programs for which the Operational Services Division will prospectively negotiate a commercial fee with the private schools. Departments with questions as to an appropriate commercial fee are encouraged to contact OSD or their Secretariat.

Program budgets: Program budgets by their nature tend to focus attention on the level and type of resources needed to attain the anticipated outcomes of the program. However, primary emphasis should be placed on identifying and determining how to attain the desired outcomes and then on the resources that are necessary to accomplish those outcomes. During the RFR process, program budgets may provide important information to Departments in evaluating responses and consequently may be requested. Except for those budgets required as a result of a cost reimbursement compensation structure or for the services that will be paid for with federal funds, program budgets are not required to be attached to human and social service contracts. Contractors, consistent with good practice, should use program budgets to manage expenditures and to plan for the resources needed to accomplish the outcomes of the program.

Compensation Structure Limitations: There are a few limitations on Departments' ability to negotiate the compensation for human and social service programs. See also the associated guidance entitled *General Audit and Compliance Requirements* available via a link at the end of this document. Those limitations include:

- **Health care, special education, and other authorized rates:** Departments must use prices for programs where those prices have been established pursuant to an independent price setting authority, such as the Division of Health Care Finance and Policy or, in the case of certain special education services, OSD. Under M.G.L. c. 118G, the Division of Health Care Finance and Policy is responsible for establishing rates of payment for "health care services" that include many services which traditionally have been procured by Departments through the Purchase of Service system. Departments must utilize the prices established by the Division of Health Care Finance and Policy for services or programs under its jurisdiction when executing a contract for those services or programs. Further, OSD authorizes, pursuant to 808 CMR 1.06, prices for M.G.L. c. 71B approved private school programs. Departments must utilize the prices authorized by OSD when buying slots in one of these approved programs.
- **The Commonwealth must receive the lowest price:** Generally, the negotiated price may not be greater than the lowest price charged by the contractor for the same service to any other public or private purchaser (see 808 CMR 1.03 (4)).
- **No balance billing:** The negotiated price must be accepted by the contractor as full payment (see 808 CMR 1.03 (5)).
- **Restrictions on the use of client funds or third-party payments:** Any client resources or third-party payments not specifically anticipated in the price and defined in the contract must go to reduce the Department's contract obligation (see 808 CMR 1.03(5)).
- **Prices may not include any non-reimbursable costs:** Prices may not include items that are considered non-reimbursable under the provisions of 808 CMR 1.05.

Other RFR Specification considerations:

- Incorporate an overview of the needs and characteristics of the individuals to be served.

- Specific requirements including, but not limited to, staffing patterns and qualifications, hours of operation, linkages or affiliations, specialized equipment, training, supplies, or site requirements.
- *The Discharge Planning Specifications for Certain Procurements and the Employment and Training Specifications for Certain Procurements* are required for selected human and social services. These specifications are available via links at the end of this document.
- See *OSD Update 08-03, Purchase-of-Service (POS) Capital Items Procurement Policy*, via a link at the end of this section, for specific guidance on procurement of capital items of furnishings and equipment for human and social service programs.

Debriefings and Appeals

Debriefings: Departments must provide an opportunity for debriefing to non-successful Bidders. Non-successful Bidders must request and participate in a debriefing as a prerequisite to filing an administrative appeal. The SSST must specify the individual to whom requests for debriefings should be directed. To facilitate the exchange of information in a timely manner, SSSTs also must identify timeframes for both receipt of debriefing requests (within 14 days of the notification of contract execution) and scheduling of debriefing meetings (within 14 days of the receipt of the request). These timeframes may be modified at the discretion of the SSST. Written documentation of who attended and what was discussed at the debriefing must be placed in the procurement file.

Department Appeals: Pursuant to 801 CMR 21.06(15), non-successful Bidders may, after a debriefing, submit a formal appeal to the SSST or procuring Department. Each SSST is responsible for the development of appeal procedures that are designed to promote and protect the principles of fundamental fairness, as well as to minimize the administrative burden on both SSSTs and Bidders.

The initiation of an appeal by a Bidder may introduce an element of uncertainty into the competitive process for the selected Bidder, the SSST, other purchasers of the service, families, and the individuals being served. For that reason, SSSTs are encouraged to develop procedures for hearing procurement appeals that are streamlined and expeditious. Pending appeals at the Department level shall not prohibit the Department from proceeding with procurement activities and executing contracts. Appeal procedures, must at a minimum, include the following information:

- The person within the Department to whom requests for an appeal should be directed.
- Any time limitations for requesting an appeal.
- Specific grounds for appeal.

Department bids must state that appeals will be considered only when they allege that either:

- The Department failed to comply with applicable purchase of service regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the procurement policies and procedures in this Handbook, other policies and procedures issued by OSD, and the specifications of the RFR; or
- There was a fundamental unfairness in the procurement process.

Administrative appeals are not subject to the formal procedures specified in the *State Administrative Procedures on Adjudicatory Procedures and Appeals* (M.G.L. c. 30A, s. 10 and s. 11). However, OSD does encourage Departments to provide an opportunity for a hearing or meeting between the parties, as appropriate. Departments may reject appeal requests based on grounds other than those stated above. Information on procedures for appeals to OSD must be included in the RFR (see *RFR – Required Specifications for Purchase of Service (POS)*, on the OSD Forms webpage). All documentation pertaining to appeals must be placed in the procurement file.

Supplier Diversity Plan

See the Supplier Diversity Program (SDP) Form for Purchase of Service (POS) form on the [OSD Forms](#) webpage.

POS Attachments

Six contract attachments have been developed specifically to document programmatic and fiscal specifications for human and social service procurements. Instructions for completion and a detailed explanation of the content of each attachment may be found in the associated guidance entitled *Purchase of Service Attachment Instructions for Human and Social Services* available via a link at the end of this section.

Required Forms/Use of POS Attachments

<i>Commonwealth Terms and Conditions for Human and Social Services</i>	<p>Required attachment to the RFR.</p> <p>Departments must:</p> <ol style="list-style-type: none"> 1. For electronic responses: Inform Bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR); or 2. For hardcopy responses: Require Bidders to execute as part of the response (if the form is not already on file with CTR).
<p>Purchase of Service Attachments:</p> <ul style="list-style-type: none"> • Attachment 1: Program Cover Page • Attachment 2: Performance Measures • Attachment 3: Fiscal Year Program Budget • Attachment 4: Rate Calculation/Maximum Obligation Calculation Page • Attachment 5: Non-Reimbursable Cost Program Offset Schedule • Attachment 6: Capital Budget 	<p>Optional attachments to the RFR.</p> <p>Departments have the option to require Bidders to complete as part of their response or complete at time of contract execution.</p> <p>Attachment 1 is required at contract execution.</p> <p>Attachment 2 may be required at contract execution.</p> <p>Attachments 3, 4, 5, and 6 may be required at contract execution, depending on specific requirements.</p>

Associated Policy and Guidance Links:

[808 CMR 1.00 Compliance, Reporting and Auditing for Human and Social Services](#)

[Discharge Planning Specifications for Certain Requests for Response](#)

[Employment and Training Specifications for Certain Requests for Responses](#)

[General Audit and Compliance Requirements](#)

[OSD Update 08-03, Purchase of Service \(POS\) Capital Items Procurement Policy](#)

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